

REPUBLIC OF SOUTH AFRICA

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# TRADITIONAL AND KHOI-SAN LEADERSHIP BILL

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*(As amended by the Select Committee on Cooperative Governance and  
Traditional Affairs (National Council of Provinces))  
(The English text is the official text of the Bill)*

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(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

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# BILL

To provide for the recognition of traditional and Khoi-San communities, leadership positions and for the withdrawal of such recognition; to provide for the functions and roles of traditional and Khoi-San leaders; to provide for the recognition, establishment, functions, roles and administration of kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils, as well as the support to such councils; to provide for the establishment, composition and functioning of the National House of Traditional and Khoi-San Leaders; to provide for the establishment of provincial houses of traditional and Khoi-San leaders; to provide for the establishment and composition of local houses of traditional and Khoi-San leaders; to provide for the establishment and operation of the Commission on Khoi-San Matters; to provide for a code of conduct for members of the National House, provincial houses, local houses and all traditional and Khoi-San councils; to provide for regulatory powers of the Minister and Premiers; to provide for transitional arrangements; to amend certain Acts; to provide for the repeal of legislation; and to provide for matters connected therewith.

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1

## INTERPRETATION, APPLICATION AND PRINCIPLES

## Definitions and application

1. (1) In this Act, unless the context indicates otherwise—
- “**area of jurisdiction**” means the area of jurisdiction defined for a kingship or queenship council, principal traditional council, traditional council and traditional sub-council; 5
- “**branch**” means a branch recognised as such in terms of section 5(5);
- “**branch head**” means a Khoi-San leader who is the head of a branch and who has been recognised as a branch head in terms of section 10; 10
- “**code of conduct**” means the code of conduct provided for in Schedule 1;
- “**Commission**” means the Commission on Khoi-San Matters established in terms of section 51;
- “**Department**” means the national department responsible for traditional and Khoi-San leadership and governance matters; 15
- “**district municipality**” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**headman or headwoman**” means a traditional leadership position contemplated in section 7 which—
- (a) is under the authority of, or exercises authority within the area of jurisdiction of, a senior traditional leader in accordance with customary law and customs; 20  
and
- (b) has been recognised as such in terms of section 8;
- “**headmanship or headwomanship**” means a headmanship or headwomanship recognised in terms of section 3; 25
- “**Khoi-San**” means any person who lives in accordance with the customs and customary law of the Cape-Khoi, Griqua, Koranna, Nama or San people, or any subgrouping thereof, and is consequentially a member of a particular Khoi-San community as contemplated in section 5;
- “**Khoi-San community**” means a Khoi-San community recognised as such in terms of section 5; 30
- “**Khoi-San council**” means a council established in terms of section 18;
- “**Khoi-San leader**” means a person recognised as a senior Khoi-San leader or a branch head in terms of section 10 and includes a regent, acting Khoi-San leader and deputy Khoi-San leader; 35
- “**king or queen**” means a person recognised as a king or queen in terms of section 8;
- “**kingship or queenship**” means a kingship or queenship recognised in terms of section 3;
- “**kingship or queenship council**” means a kingship or queenship council contemplated in section 16; 40
- “**local house**” means a local house of traditional and Khoi-San leaders contemplated in section 50;
- “**local municipality**” means a local municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 45
- “**metropolitan municipality**” means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- “**Minister**” means the national Minister responsible for traditional and Khoi-San leadership and governance matters; 50
- “**National House**” means the National House of Traditional and Khoi-San Leaders established in terms of section 27;
- “**prescribe**” means prescribed by regulation in terms of section 60;
- “**principal traditional community**” means a community deemed to be a principal traditional community in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), prior to the repeal of that Act, or as contemplated in section 63(8)(c) of this Act; 55
- “**principal traditional council**” means a council established and recognised in terms of section 16;

**“principal traditional leader”** means a person deemed to be a principal traditional leader in terms of section 28(9)(c) of the Traditional Leadership and Governance Framework Act, 2003, prior to the repeal of that Act, or as contemplated in section 63(8)(c) of this Act, or a successor to such person as contemplated in section 8; 5

**“provincial house”** means a provincial house of traditional and Khoi-San leaders as contemplated in section 49;

**“regent”** means any person who, in terms of section 12, holds a traditional or Khoi-San leadership position in a temporary capacity until the identified or elected leader to such position who is a minor, becomes a major as contemplated in section 17 of the Children’s Act, 2005 (Act No. 38 of 2005) and is recognised in terms of this Act; 10

**“royal family”** means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional or Khoi-San community, who have been identified in terms of customary law or customs, and includes, where applicable, other family members who are close relatives of the ruling family; 15

**“rules and orders”** means rules and orders of the National House as contemplated in section 46;

**“Secretary”** means the Secretary of the National House appointed in terms of section 37; 20

**“senior traditional leader”** means a person recognised as a senior traditional leader in terms of section 8;

**“senior Khoi-San leader”** means a person recognised as a senior Khoi-San leader in terms of section 10; 25

**“this Act”** includes any regulations made in terms of any relevant provision of this Act;

**“traditional community”** means a traditional community recognised as such in terms of section 3;

**“traditional council”** means a traditional council contemplated in section 16 and includes a traditional sub-council contemplated in section 17; 30

**“traditional leader”** means a person who has been recognised as a king or queen, principal traditional leader, senior traditional leader or headman or headwoman in terms of section 8 and includes regents, acting traditional leaders and deputy traditional leaders; 35

**“traditional leadership”** means the institutions or structures established in terms of customary law or customs, or customary systems or procedures of governance, recognised, utilised or practiced by traditional communities;

**“traditional sub-council”** means a traditional sub-council contemplated in section 17. 40

(2) Nothing contained in this Act may be construed as precluding members of a traditional or Khoi-San community from addressing a traditional or Khoi-San leader by the customary designation accorded to him or her by custom, but such customary designation does not derogate from or add anything to the status, role and functions of a traditional or Khoi-San leader as provided for in this Act. 45

(3) Traditional and Khoi-San leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with customs, and none of the definitions contained in subsection (1) must be construed as conferring or detracting from such seniority.

(4) Any provision of this Act that requires the consultation of a provincial or local house of traditional and Khoi-San leaders has to be complied with only in instances where such a house has been established: Provided that in instances where such a house has not been established, such requirement does not apply and will have no effect on any action or decision taken in terms of the relevant provision. 50

(5) The provisions of this Act relating to the recognition of a traditional or Khoi-San community or leader shall not be construed as bestowing upon such a community or leader any special indigenous, first nation or any other similar status. 55

## Guiding principles

2. (1) A kingship or queenship, principal traditional community, traditional community, headmanship, headwomanship and Khoi-San community must transform and adapt customary law and customs relevant to the application of this Act so as to 60

comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by—

- (a) preventing unfair discrimination;
  - (b) promoting equality; and
  - (c) seeking to progressively advance gender representation in the succession to traditional and Khoi-San leadership positions. 5
- (2) The resources of any community, leader, council, house, Commission or committee recognised or established in accordance with a provision of this Act—
- (a) must not be used to promote or prejudice the interest of any political party or any grouping of such party, or to promote or prejudice any candidate in any election, irrespective whether such election is an internal election within the relevant party or an external election; and 10
  - (b) may only be used for purposes of the functions, duties and responsibilities allocated by this Act to such community, leader, council, house, Commission or committee. 15

## CHAPTER 2

### LEADERSHIP AND GOVERNANCE

#### *Part 1*

#### *Traditional and Khoi-San communities*

#### **Recognition of kingship or queenship, traditional community, headmanship or headwomanship** 20

3. (1) Traditional communities that are grouped together may be recognised as a kingship or queenship if—
- (a) they are recognised as traditional communities in terms of subsection (4);
  - (b) each has a recognised traditional council with a defined area of jurisdiction as contemplated in section 16; 25
  - (c) each has a recognised senior traditional leader as contemplated in section 8;
  - (d) they recognise as their king or queen, a specific recognised senior traditional leader who, in terms of custom and customary law, is of a higher status than the other senior traditional leaders; 30
  - (e) they recognise themselves as a distinct group of traditional communities with a proven history of existence, from a particular point in time up to the present, distinct from principal traditional communities and other traditional communities;
  - (f) they have a system of traditional leadership at a kingship or queenship level; and 35
  - (g) they have an existence of distinctive cultural heritage manifestations.
- (2) (a) Traditional communities that meet the criteria set out in subsection (1), may apply to the President for recognition as a kingship or queenship which application must be accompanied by a resolution of each traditional council referred to in subsection (1)(b), indicating that such council forms part of the kingship or queenship being applied for. 40
- (b) An application in terms of paragraph (a) must be accompanied by an application for the recognition of the position of a king or queen of those communities as contemplated in section 8. 45
- (3) (a) The President may, after consultation with the Minister, by notice in the *Gazette* recognise the traditional communities contemplated in subsections (1) and (2) as a kingship or queenship.
- (b) The President may, before recognising a kingship or queenship as contemplated in paragraph (a)— 50
- (i) cause an investigation to be conducted by the Minister to determine whether the relevant traditional communities comply with the criteria set out in subsection (1);
  - (ii) direct the Minister to conduct consultations with the relevant Premier, the provincial house in the relevant province, the National House and the senior traditional leaders of traditional communities who fall under the kingship or queenship being applied for; and 55

- (iii) determine a period within which the Minister must finalise the investigation or consultations contemplated in subparagraphs (i) and (ii).
- (4) A community may be recognised as a traditional community if it—
- (a) has a system of traditional leadership at a senior traditional leadership level recognised by other traditional communities; 5
  - (b) observes a system of customary law;
  - (c) recognises itself as a distinct traditional community with a proven history of existence, from a particular point in time up to the present, distinct and separate from other traditional communities; 10
  - (d) occupies a specific geographical area;
  - (e) has an existence of distinctive cultural heritage manifestations; and
  - (f) where applicable, has a number of headmanship or headwomanship.
- (5) (a) A community that meets the criteria set out in subsection (4), may apply to the Premier concerned for recognition as a traditional community.
- (b) An application in terms of paragraph (a) must be accompanied by an application for the recognition of the position of a senior traditional leader of that community as contemplated in section 8. 15
- (6) The Premier concerned may, after consultation with the relevant provincial house and by notice in the relevant Provincial *Gazette* recognise the community contemplated in subsection (4) as a traditional community. 20
- (7) A headmanship or headwomanship may be recognised as such if it—
- (a) has a system of traditional leadership at a headmanship or headwomanship level and is recognised as such by the relevant traditional community;
  - (b) consists of an area within the area of jurisdiction of the traditional council of the relevant traditional community; and 25
  - (c) will contribute to the more effective and efficient administration of the relevant traditional council.
- (8) (a) A portion of a traditional community that meets the criteria set out in subsection (7), may request the relevant traditional council to apply to the Premier concerned for the recognition of such portion of the community as a headmanship or headwomanship. 30
- (b) If the traditional council is of the view that the portion of the traditional community referred to in paragraph (a) does not meet the criteria set out in subsection (7), the traditional council must inform the community and the Premier accordingly and provide reasons for such view. 35
- (9) The Premier concerned may, after consultation with the relevant traditional council and by notice in the Provincial *Gazette*, recognise the headmanship or headwomanship contemplated in subsection (7).
- (10) The Minister may, in accordance with the provisions of section 60, make regulations in respect of— 40
- (a) a process that will allow for sufficient consultations as envisaged in subsections (6) and (9); and
  - (b) the period within which a Premier must reach a decision regarding the recognition of communities as envisaged in subsections (6) and (9).
- (11) The Premier concerned may cause an investigation to be conducted by the member of the Executive Council responsible for traditional affairs of the relevant province to determine whether a traditional community or portion of a traditional community, as the case may be, complies with the criteria set out in subsections (4) and (7) respectively, and with the guiding principles set out in section 2. 45

**Withdrawal of recognition of kingship or queenship, principal traditional community, traditional community, headmanship or headwomanship** 50

4. (1) The withdrawal of the recognition of a kingship or queenship or principal traditional community, as the case may be, may, subject to subsection (12), only be considered where the majority of traditional communities under the jurisdiction of the kingship or queenship or principal traditional community concerned request the President, in the case of a kingship or queenship, or the relevant Premier, in the case of a principal traditional community, to withdraw the recognition of their kingship or queenship or principal traditional community: Provided that such request must be accompanied by a resolution of each traditional council of such traditional communities and the grounds on which the request is based. 55  
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(2) The President or relevant Premier, as the case may be, must before taking a decision in terms of subsection (1), cause an investigation to be conducted by the Minister or member of the Executive Council responsible for traditional affairs of the province concerned, as the case may be, in order to establish whether there is sufficient cause for the withdrawal of the recognition of the kingship or queenship or principal traditional community. 5

(3) (a) The withdrawal of the recognition of a kingship or queenship must be done by the President by notice in the *Gazette* after consultation with the kingship or queenship council, the National House, the Minister, the relevant Premier and the provincial house concerned. 10

(b) The President may direct the Minister to conduct the consultations referred to in paragraph (a) and determine a period within which such consultations must be finalised.

(4) (a) The withdrawal of the recognition of a principal traditional community must be done by the Premier concerned by notice in the Provincial *Gazette*.

(b) Before the withdrawal of a recognition contemplated in paragraph (a), the Premier concerned must consult the relevant provincial house, any community that may be affected and the senior traditional leaders who form part of the principal traditional community. 15

(c) The Premier concerned may direct the member of the Executive Council responsible for traditional affairs of the relevant province to conduct the consultations referred to in paragraph (b) and determine a period within which such consultations must be finalised. 20

(5) The withdrawal of the recognition of a community as a traditional community may, subject to subsection (12), only be considered where—

(a) the community concerned requests the relevant Premier to withdraw its recognition as a traditional community: Provided that if such traditional community forms part of a kingship or a queenship or a principal traditional community, such request may only be submitted after the traditional community has consulted the kingship or queenship council or principal traditional council; 25 30

(b) a kingship or a queenship council or a principal traditional council requests the relevant Premier to withdraw the recognition of a traditional community which forms part of such kingship, queenship or principal traditional community: Provided that such request may only be submitted after the kingship or queenship council or principal traditional council has consulted the relevant traditional community; 35

(c) the Premier concerned is requested by any affected community or communities to review the position of such a community or communities that was or were divided or merged prior to 1994 in terms of applicable legislation; or

(d) two or more recognised communities request the Premier concerned to merge such communities into a single traditional community: 40

Provided that any request for the withdrawal of the recognition of a traditional community must be accompanied by the grounds on which the request is based: Provided further that any such request must be accompanied by information setting out the details of the consultation contemplated in this subsection. 45

(6) (a) The withdrawal of the recognition of a community as a traditional community must be done by the Premier concerned by notice in the relevant Provincial *Gazette*.

(b) Before the withdrawal of a recognition contemplated in paragraph (a), the Premier concerned must consult the relevant provincial house, any community that may be affected and, if applicable, the kingship or queenship council or principal traditional council referred to in subsection (5)(a) and (b), before the withdrawal of the recognition of a traditional community may be effected by way of a notice in the Provincial *Gazette*. 50

(7) (a) The Premier concerned must, by notice in the Provincial *Gazette*, recognise a merged traditional community contemplated in subsection (5)(d) and disestablish the individual traditional communities that requested to be merged. 55

(b) The notice referred to in paragraph (a) must stipulate the legal, practical and other consequences of the merger and disestablishment, including—

(i) if applicable, the transfer of assets, liabilities and administrative and other records of the disestablished traditional community; and

(ii) the leadership position of the merged traditional community and the vacation of office of any office bearer of the disestablished traditional community. 60

(8) (a) The withdrawal of the recognition of a headmanship or headwomanship may, subject to subsection (12), only be considered where the relevant traditional council requests the Premier concerned to withdraw such recognition.

(b) A request referred to in paragraph (a) must be accompanied by the grounds on which the request is based. 5

(9) The Premier concerned may, after consultation with the relevant traditional council and by notice in the *Provincial Gazette*, withdraw the recognition of the headmanship or headwomanship as contemplated in subsection (8).

(10) The Premier concerned may, before withdrawing the recognition of a traditional community, a headmanship or headwomanship, cause an investigation to be conducted in order to establish whether there is sufficient cause for the withdrawal of such recognition. 10

(11) The Minister may, in accordance with the provisions of section 60, make regulations in respect of—

(a) a process that will allow for sufficient consultations as envisaged in subsections (4), (5), (6) and (9); and 15

(b) the period within which a Premier must reach a decision regarding the withdrawal of the recognition of communities as envisaged in this section.

(12) (a) The recognition of a kingship or queenship, principal traditional community, traditional community, headmanship or headwomanship must be withdrawn if so ordered by a court. 20

(b) The President, in the case of a kingship or a queenship, and the relevant Premier, in the case of a principal traditional community, traditional community, headmanship or headwomanship, must give notice in the *Gazette* or *Provincial Gazette*, as the case may be, of any withdrawal of recognition in accordance with a court order. 25

(c) The notice contemplated in paragraph (b) must stipulate the legal, practical and other consequences of the withdrawal of recognition.

### **Recognition of Khoi-San community and branch**

5. (1) (a) A community may, subject to paragraph (b), apply to the Premier concerned to be recognised as a Khoi-San community if it— 30

(i) has a history of self-identification by members of the community concerned, as belonging to a unique community distinct from all other communities;

(ii) observes distinctive established Khoi-San customary law and customs;

(iii) is subject to a system of hereditary or elected Khoi-San leadership with structures exercising authority in terms of customary law and customs of that community; 35

(iv) has an existence of distinctive cultural heritage manifestations;

(v) has a proven history of existence of the community from a particular point in time up to the present; and

(vi) occupies a specific geographical area or various geographical areas together with other non-community members: 40

Provided that all applications for recognition as contemplated in this section must be lodged with the Commission and dealt with in accordance with the procedures set out in section 58 until such time as the period referred to in section 57(2)(a) has expired, whereafter all applications for recognition must be lodged with the Premier in terms of this section. 45

(b) An application in terms of paragraph (a) must be accompanied by—

(i) an application for the recognition of the position of a senior Khoi-San leader of that community as contemplated in section 10; and

(ii) a list of all community members: Provided that such a list must in respect of each community member contain his or her— 50

(aa) full names and surname;

(bb) identification number and a certified copy of his or her valid identification document or passport, or in the case of a community member who is younger than 16 years, a certified copy of his or her birth certificate; 55

(cc) physical address as confirmed by documentary evidence, including the name of the province where such physical address is located;

(dd) contact details;

(ee) signature acknowledging his or her association with such community; and

(ff) any other information as may be requested by the Commission or as may be prescribed by the Minister: 60

Provided that in the case of any community member who is younger than 16 years, the information required by this subparagraph must be provided by any parent or the legal guardian of such member and such parent or legal guardian must sign the list on behalf of the relevant member: Provided further that only community members who are 18 years or older may participate in the official affairs of a Khoi-San community or council as provided for in this Act. 5

(c) A person who has confirmed his or her association with a particular Khoi-San community by signing a list as contemplated in paragraph (b)(ii), may not be a member of any other Khoi-San community.

(d) Once a Khoi-San council has been established for a particular Khoi-San community, such council must update the list of members referred to in paragraph (b)(ii) at least annually and provide copies of such a list to the Minister, the Premier of the province where such council is situated and the Premiers of the provinces where any branch of such a community may have been recognised: Provided that the Minister or any relevant Premier may take the necessary steps to have the information contained in such a list verified. 10 15

(2) The Premier concerned may cause an investigation to be conducted to determine whether a community meets the criteria set out in subsection (1) and the guiding principles set out in section 2.

(3) The Premier concerned may, after consultation with the relevant provincial house, by notice in the relevant Provincial *Gazette* recognise the community contemplated in subsection (1) as a Khoi-San community. 20

(4) (a) A Khoi-San community may, where applicable, consist of branches recognised in terms of subsection (5).

(b) A branch may be recognised in terms of subsection (5) if it— 25

- (i) is recognised by the Khoi-San community as a branch of that community;
- (ii) consists of not less than 10% of the total number of members of such community as reflected in the list of community members referred to in subsection (1)(b)(ii);
- (iii) will contribute to a more effective and efficient administration of the Khoi-San council; and 30

(iv) recognises the senior Khoi-San leader in terms of customary law and customs.

(5) (a) A Khoi-San council may, subject to paragraphs (b) and (c), apply to the Premier of the province where the council is situated, for the recognition of a branch if it meets the criteria set out in subsection (4).

(b) If the Premier is of the view that the branch meets the criteria set out in subsection (4), but such branch is situated in a province other than the province where the Khoi-San council is situated, the Premier of the province where the council is situated must request the Premier of the province where the branch is situated to recognise that branch. 35

(c) The recognition of a branch contemplated in paragraph (a) or (b) is subject to subsections (6), (7) and (8). 40

(6) The Premier of the province where the branch is situated may cause an investigation to be conducted to determine whether a branch meets the criteria set out in subsection (4).

(7) The Premier of the province where the branch is situated may, subject to subsection (8), recognise a branch that meets the criteria set out in subsection (4). 45

(8) Where the Khoi-San community consists of branches in different provinces, the recognition of such branches must be done by the relevant Premiers by notice in the Provincial *Gazettes* of the provinces where the branches are situated.

(9) (a) A Premier must on an annual basis, or when requested by the Minister, provide the Minister with a report on the recognition of Khoi-San communities and branches. 50

(b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

#### **Withdrawal of recognition of Khoi-San community and branch**

6. (1) The withdrawal of the recognition of a Khoi-San community or a branch may, subject to subsection (5), only be considered where— 55

- (a) a Khoi-San council requests the Premier concerned that the recognition of a Khoi-San community or the recognition of a branch or branches of such community be withdrawn; or
- (b) the Khoi-San councils of two or more recognised Khoi-San communities request the Premier concerned to merge such communities into a single Khoi-San community: 60

Provided that such request must be accompanied by the grounds on which the request is based.

(2) (a) Subject to paragraph (b) and subsection (3), the Premier concerned may, after consultation with the relevant provincial house, by notice in the relevant Provincial *Gazette* withdraw the recognition of a Khoi-San community or a branch as contemplated in subsection (1)(a). 5

(b) Where the branches of a Khoi-San community which are to be withdrawn, are situated in more than one province, the Premiers of the provinces where the branches are situated must, subject to subsection (3), by notice in the relevant Provincial *Gazettes* withdraw the recognition of the branches. 10

(3) The Premier or Premiers concerned may, before withdrawing the recognition of the Khoi-San community or branch in terms of subsection (2), cause an investigation to be conducted in order to establish whether the communities to be affected by a request contemplated in subsection (1) were consulted and support such request.

(4) (a) The Premier concerned must recognise a merged Khoi-San community contemplated in subsection (1)(b) and disestablish the individual Khoi-San communities that requested to be merged, by notice in the Provincial *Gazette*. 15

(b) Whenever Khoi-San communities are merged, such merger automatically results in the disestablishment of any branch or Khoi-San council that has been established for such communities: Provided that a merged Khoi-San community must establish a Khoi-San council in accordance with the provisions of section 18 and may request that new branches for such merged community be recognised in accordance with the provisions of section 5. 20

(c) The notice referred to in paragraph (a) must stipulate the legal, practical and other consequences of the merger and disestablishment including— 25

- (i) if applicable, the transfer of assets, liabilities and administrative and other records of the disestablished Khoi-San community, branches and councils; and
- (ii) the leadership position of the merged Khoi-San community and the vacation of office of any office bearer of a disestablished Khoi-San community or branch.

(5) (a) The recognition of a Khoi-San community or branch must be withdrawn if so ordered by a court. 30

(b) The relevant Premier must give notice in the Provincial *Gazette* of any withdrawal of recognition in accordance with a court order.

(c) The notice contemplated in paragraph (b) must stipulate the legal, practical and other consequences of the withdrawal of recognition. 35

## **Part 2**

### ***Traditional and Khoi-San leaders***

#### **Recognition of leadership positions**

7. (1) (a) There are the following traditional leadership positions:

- (i) King or queen; 40
- (ii) principal traditional leader;
- (iii) senior traditional leader; and
- (iv) headman or headwoman:

Provided that the position of principal traditional leader only applies to a person who is deemed to be a principal traditional leader as defined in section 1. 45

(b) There are the following Khoi-San leadership positions:

- (i) Senior Khoi-San leader; and
- (ii) branch head.

(2) The following criteria apply whenever a leadership position is to be recognised:

- (a) A proven history of existence of such leadership position within the community concerned; 50
- (b) a proven history of acceptance of such leadership position by the community concerned;
- (c) a history of functions and powers of the specific leadership position in terms of the established customary law and customs within the particular community; 55
- (d) the recognition of the community in terms of this Act; and

- (e) a proven history of either—
- (i) hereditary leadership in terms of customary law or customs of the community, with or without a customary role for community participation in the determination or confirmation of the individual as leader; or
  - (ii) elected leadership where, in terms of the customary law or customs of the community concerned, the leader is elected. 5

(3) (a) An application for the recognition of the position of a king or a queen must be submitted to the President.

(b) An application for the recognition of the position of a principal traditional leader, senior traditional leader, senior Khoi-San leader, headman, headwoman or branch head must be submitted to the Premier concerned: Provided that all applications for the recognition of the position of a senior Khoi-San leader or branch head must be lodged with the Commission until such time as the period referred to in section 57(2)(a) has expired, whereafter all applications for recognition must be lodged with the Premier in terms of sections 5 and 10, respectively. 10 15

(4) Where there is evidence or an allegation that a leadership position does not comply with the criteria set out in subsection (2), the President or Premier, as the case may be, must cause an investigation to be conducted by an investigative committee designated by the President or Premier, as the case may be, which committee must provide a report on whether the leadership position complies with the said criteria: Provided that in the case of the leadership position of a king or a queen, at least one member of the investigative committee must be a member of the National House and in the case of any other leadership position, at least one member of the investigative committee must be a member of the provincial house concerned. 20

(5) The President or the Premier, as the case may be, may, after having considered the report of the investigative committee, recognise the leadership position. 25

(6) The recognition of a leadership position in terms of this section must be done by notice in the *Gazette* or *Provincial Gazette*, as the case may be.

(7) (a) Whenever a senior traditional leader is recognised as a king or a queen in terms of this Act or has been so recognised prior to the commencement of this Act, such senior traditional leadership position becomes vacant or is regarded as vacant, as the case may be. 30

(b) A vacant senior traditional leadership position as contemplated in paragraph (a) may, subject to paragraph (c) and within 90 days of such vacancy occurring or, in the case of a recognition as a king or a queen prior to the commencement of this Act, within 90 days from the commencement of this Act, be filled— 35

- (i) by means of the recognition of another person as senior traditional leader in accordance with the provisions of section 8; or
- (ii) by the identification of a deputy traditional leader in accordance with the provisions of section 14. 40

(c) Whenever the recognition of a kingship or a queenship is withdrawn in terms of section 4, such withdrawal will automatically result in—

- (i) the recognised king or queen reverting to the position of senior traditional leader which he or she occupied prior to recognition as a king or queen; and
- (ii) the withdrawal of the recognition of the senior traditional leader referred to in paragraph (b)(i) or the lapsing of the recognition of a deputy traditional leader referred to in paragraph (b)(ii). 45

(d) A person whose recognition as senior traditional leader has been withdrawn as contemplated in paragraph (c)(ii)—

- (i) relinquishes all functions, roles, duties, responsibilities and rights associated with the relevant position of senior traditional leader; 50
- (ii) shall continue to receive the salary and benefits associated with such senior traditional leadership position until his or her death; and
- (iii) is no longer entitled to receive any allowance or enabling resource as contemplated in the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997. 55

(8) (a) Any recognised traditional or Khoi-San leader may resign as such leader: Provided that such resignation must be in writing and must, in the case of a king or a queen, be submitted to the President and in the case of any other recognised traditional or Khoi-San leader, be submitted to the Premier who recognised such leader: Provided further that in the case of a Khoi-San leader who was recognised by the Minister in terms of section 58, such resignation must be submitted to the Minister and a copy thereof must be submitted to the Premier of the province in which such Khoi-San leader resides. 60

(b) A traditional or Khoi-San leader who resigns as such leader automatically relinquishes, with effect from the date of resignation, any salaries, allowances, benefits and rights associated with the leadership position occupied prior to such resignation.

(c) A traditional or Khoi-San leader who has resigned may not reapply for recognition. 5

(d) Whenever a traditional or Khoi-San leader resigns as contemplated in this subsection, the relevant position becomes vacant and has to be filled in accordance with the relevant provisions of this Act, taking into account the fact that a resignation does not affect succession in terms of customary law and customs of the particular community.

(9) Any person who is not a recognised leader as contemplated in subsection (1) but purports to be such a leader, is guilty of an offence and liable upon conviction to a fine or imprisonment not exceeding three years. 10

### **Recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman**

8. (1) Whenever the position of a king or queen is to be filled or the successor to a principal traditional leader is to be identified, the following process applies: 15

(a) The royal family concerned must, within 90 days after the need arises for the position of a king or queen, or principal traditional leader to be filled, and with due regard to applicable customary law and customs—

(i) identify a person who qualifies in terms of customary law and customs to assume the position of a king or queen, or principal traditional leader, as the case may be, taking into account whether any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14)(a), (c), (d), (e) or (k) apply to that person; and 20

(ii) apply to the President or relevant Premier, as the case may be, for the recognition of the person so identified as a king or queen, subject to section 3(2), or principal traditional leader which application must be accompanied by— 25

(aa) the particulars of the person so identified to fill the position of a king or queen, or principal traditional leader; and 30

(bb) the reasons for the identification of that person as king or queen, or principal traditional leader.

(b) The President may, after consultation with the Minister and the Premier concerned, and subject to subsections (3) and (4), recognise as a king or queen a person so identified in terms of paragraph (a)(i), taking into account whether a kingship or queenship has been recognised in terms of section 3. 35

(c) The Premier may recognise as the successor to a principal traditional leader a person so identified in terms of paragraph (a)(i), taking into account whether a principal traditional community still exists.

(2) Whenever the position of senior traditional leader, headman or headwoman is to be filled, subject to subsection (3)— 40

(a) the royal family concerned must, in the event of hereditary succession, within 90 days after the need arises for any of those positions to be filled, identify a person who qualifies in terms of customary law or customs to assume the position in question, taking into account whether any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14)(a), (c), (d), (e) or (k) apply to that person; 45

(b) in the event that hereditary succession is not applicable, a person who is to assume the position of headman or headwoman must, in terms of customs or customary law be identified or elected by the community concerned, within 90 days after the need arises for such a position to be filled, taking into account whether any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14)(a), (c), (d), (e) or (k) apply to that person; 50

(c) the royal family in the case of hereditary succession referred to in paragraph (a), through the relevant customary structure, and the traditional council concerned in the case of an identified or elected headman or headwoman referred to in paragraph (b), must apply to the Premier for the recognition of the person so identified or elected and provide the Premier with the particulars of such person; and 55

- (d) the Premier concerned must, subject to subsection (3), recognise the person so identified or elected as senior traditional leader, headman or headwoman, as the case may be.
- (3) Whenever the President recognises a king or queen, or a Premier recognises the successor to a principal traditional leader or recognises a senior traditional leader, headman or headwoman, the President or the Premier, as the case may be, must—
- (a) publish a notice in the *Gazette* recognising such person as a king or queen, or publish a notice in the relevant Provincial *Gazette* recognising such person as a principal traditional leader, senior traditional leader, headman or headwoman;
  - (b) issue a certificate of recognition to such person; and
  - (c) inform the National House of the recognition of a king or queen and inform the relevant provincial house of the recognition of a principal traditional leader, senior traditional leader, headman or headwoman.
- (4) Where there is evidence or an allegation that the identification of a person as a king or queen, principal traditional leader or senior traditional leader, or the identification or election of a person as a headman or headwoman, was not done in terms of customary law and customs, the President or the relevant Premier, as the case may be—
- (a) must cause an investigation to be conducted by an investigative committee designated by the President or Premier, as the case may be, which committee must, in the case of a committee designated by the President, include at least one member of the National House and in the case of a committee designated by a Premier, include at least one member of the relevant provincial house, to provide a report on whether the identification or election of the relevant person was done in accordance with customary law and customs and if not, which person should be so identified or whether a new election should be held; and
  - (b) must, where the findings of the investigative committee indicate that the identification or election of the person referred to in subsections (1) and (2) was not done in terms of customary law and customs, refer the report contemplated in paragraph (a) to the royal family or relevant traditional council in the case of an elected headman or headwoman, for its comments.
- (5) The President or the relevant Premier, as the case may be, may, after having considered the report of the investigative committee as well as the comments of the royal family, subject to subsection (3) recognise a person as king or queen, principal traditional leader, senior traditional leader, headman or headwoman, as the case may be.
- (6) The Minister may, in accordance with the provisions of section 60, make regulations in respect of the—
- (a) consultation by the Premier concerned with the traditional council where the position of a senior traditional leader, headman or headwoman is to be filled; and
  - (b) procedure to be followed for the identification or election of a senior traditional leader, headman or headwoman in instances where the customs or customary law does not make provision for such identification or election.

**Withdrawal of recognition of king or queen, principal traditional leader, senior traditional leader, headman or headwoman**

9. (1) The recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman, subject to subsections (2) and (3)—
- (a) must be withdrawn if he or she—
    - (i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
    - (ii) is declared mentally unfit or mentally disordered by a court; or
    - (iii) no longer permanently resides within the area of the kingship or queenship council, principal traditional council or traditional council, as the case may be; or
  - (b) may be withdrawn if he or she—
    - (i) has been removed from office in terms of the code of conduct; or
    - (ii) has transgressed customary law or customs, on a ground that warrants withdrawal of recognition; and
  - (c) must be withdrawn if so ordered by a court.

(2) (a) Whenever in the case of a king or a queen, any of the grounds referred to in subsection (1) come to the attention of the royal family, the royal family must, within 90 days from the date of becoming aware of such grounds and through the relevant customary structure—

- (i) inform the President, the Premier concerned, the Minister and the senior traditional leaders within the kingship or queenship, of the particulars of such king or queen, and of the particulars relating to the specific ground referred to in subsection (1); and 5
- (ii) give written confirmation to the President that the Premier concerned and the Minister have been informed accordingly. 10

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family, the royal family may recommend the withdrawal of the recognition of the king or queen, and must furnish the President with reasons for such recommendation.

(3) (a) Whenever in the case of a principal traditional leader, senior traditional leader, headman or headwoman, any of the grounds referred to in subsection (1) come to the attention of the royal family or, in the case of an elected headman or headwoman, come to the attention of the relevant traditional council, the royal family or traditional council concerned must, within 90 days from the date of becoming aware of such grounds and through the relevant customary structure, inform the Premier concerned and the senior traditional leaders within the principal traditional community or traditional community, as the case may be, of the particulars of such principal traditional leader, senior traditional leader, headman or headwoman, and of the particulars relating to the specific ground referred to in subsection (1). 15 20

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family or, in the case of an elected headman or headwoman, come to the attention of the relevant traditional council, the royal family or traditional council, as the case may be, may recommend the withdrawal of the recognition of the principal traditional leader, senior traditional leader, headman or headwoman, and must furnish the Premier with reasons for such recommendation. 25 30

(4) (a) When the President or relevant Premier is informed of the presence of any of the grounds referred to in subsection (1)(a), the President or Premier must, after consultation with the Minister or member of the Executive Council responsible for traditional affairs in the particular province, as the case may be, and subject to subsections (5) and (6), withdraw the recognition of the relevant king or queen, principal traditional leader, senior traditional leader, headman or headwoman. 35

(b) When the President or relevant Premier is informed of the presence of any of the grounds referred to in subsection (1)(b), the President or Premier may, after consultation with the Minister or member of the Executive Council referred to in paragraph (a), and— 40

- (i) after having considered the information referred to in subsection (2)(a)(i); and
- (ii) where applicable, after having considered any recommendation and reasons as contemplated in subsection (2)(b),

withdraw the recognition of the king or queen, principal traditional leader, senior traditional leader, headman or headwoman or refuse to withdraw such recognition: 45  
 Provided that if the President or Premier refuses to withdraw such recognition, he or she, as the case may be, must in writing provide reasons to the royal family or, in the case of an elected headman or headwoman, to the relevant traditional council: Provided further that if the President refuses to withdraw a recognition, he or she must inform the relevant Premier and the Minister accordingly. 50

(5) When the President or relevant Premier withdraws the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman—

- (a) the President must cause a notice with particulars of such king or queen and the date on which such withdrawal takes effect to be published in the *Gazette*;
- (b) the relevant Premier must cause a notice with particulars of such principal traditional leader, senior traditional leader, headman or headwoman and the date on which such withdrawal takes effect to be published in the relevant Provincial *Gazette*; and 55
- (c) the President or Premier, as the case may be, must inform the royal family or traditional council concerned and the relevant king or queen, principal traditional leader, senior traditional leader, headman or headwoman of such withdrawal. 60



(6) (a) Where there is evidence or an allegation that—

- (i) the withdrawal of the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman was not based on any of the grounds set out in subsection (1);
- (ii) the information which was brought to the President or Premier's attention in accordance with subsection (2)(a)(i) was provided in bad faith; or
- (iii) a recommendation made by the royal family or relevant traditional council, in the case of an elected headman or headwoman, as contemplated in subsection (2)(b) was done in bad faith,

the President or Premier, as the case may be, must cause an investigation to be conducted by an investigative committee designated by the President or Premier which committee must, in the case of a king or queen, include at least one member of the National House and, in the case of a principal traditional leader, senior traditional leader, headman or headwoman, include at least one member of the relevant provincial house, to provide a report as well as recommendations on whether the withdrawal of the recognition of the person concerned was done in accordance with the grounds set out in subsection (1), or whether the information brought to the attention of the President or Premier was done in bad faith or not, or whether the recommendation of the royal family or traditional council was made in bad faith or not.

(b) Where the report of the investigative committee indicates that—

- (i) the withdrawal of the recognition of the king or queen, principal traditional leader, senior traditional leader, headman or headwoman was not done in accordance with any of the grounds set out in subsection (1);
- (ii) the information brought to the President or Premier's attention was done in bad faith; or
- (iii) the recommendation of the royal family or relevant traditional council was made in bad faith,

the President or Premier, as the case may be, must refer the report to the royal family or traditional council for its comments and the royal family or traditional council must provide the President or Premier with written comments within 60 days from the date of such referral.

(c) The President or Premier may, after having considered the report of the investigative committee as well as the comments of the royal family or traditional council where applicable—

- (i) refuse to withdraw the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman if the information provided or the recommendations made by the royal family or traditional council were done in bad faith; or
- (ii) by notice in the *Gazette* or Provincial *Gazette*, as the case may be, confirm the withdrawal of recognition of the particular traditional leader or revoke such withdrawal of recognition: Provided that if the withdrawal of recognition is revoked, the relevant traditional leader shall consequentially be regarded as reinstated from the date on which the recognition was withdrawn.

(7) Where the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman is withdrawn in accordance with subsection (1)(a), (b) or (c), the royal family must identify a successor in accordance with section 8 and the relevant customary law and customs.

### **Recognition of senior Khoi-San leader or branch head**

**10.** (1) Whenever the position of a senior Khoi-San leader or branch head is to be filled, subject to sections 56, 57 and 58—

- (a) the royal family concerned, in the event of hereditary succession must, within 90 days after the need arises for a position to be filled and with due regard to applicable customary law and customs, identify a senior Khoi-San leader as the hereditary successor, taking into account whether any of the grounds referred to in section 11(1) or, with the necessary changes, any of the grounds referred to in section 16(14)(a), (c), (d) or (e) apply to that person;
- (b) the Khoi-San council concerned, in the case of succession by election must, within 90 days after the need arises for a position to be filled and with due regard to applicable customary law and customs, elect a senior Khoi-San leader or a branch head to assume the position in question, taking into account whether any of the grounds referred to in section 11(1) or, with the necessary

changes, any of the grounds referred to in section 16(14)(a), (c), (d) or (e) apply to that person;

- (c) the royal family or the Khoi-San council, as the case may be, must apply to the Premier for the recognition of the person identified or elected in terms of paragraphs (a) or (b). 5

(2) A branch head elected in terms of subsection (1)(b) is, subject to the provisions of section 6(4)(b), elected for a period of five years which term must coincide with the term of the Khoi-San council concerned.

(3) (a) An election referred to in subsection (1)(b) must, subject to paragraph (b), be conducted in terms of rules and procedures adopted by the Khoi-San council concerned. 10

(b) The Minister may make regulations in respect of an election referred to in subsection (1)(b).

(4) The royal family or Khoi-San council, as the case may be, must inform the Premier concerned of the particulars of the person identified or elected as contemplated in subsection (1). 15

(5) The Premier concerned must, subject to subsections (6) and (7), where a senior Khoi-San leader or branch head has been identified or elected—

(a) by notice in the relevant Provincial *Gazette* recognise the person identified or elected in terms of subsection (1);

(b) issue a certificate of recognition to the person so identified or elected and, subject to subsection (2), indicate the term of office of an elected person; and 20

(c) inform the Minister and the relevant provincial house of the particulars of the person referred to in paragraph (a).

(6) (a) Where a branch head who has been elected resides in a province other than the province where the relevant Khoi-San council is situated, the Premier of the province within which the branch is situated must, by notice in the relevant Provincial *Gazette* and after consultation with the Premier of the province where the Khoi-San council is situated, recognise the branch head concerned. 25

(b) The provisions of subsection (5)(b) and (c) apply to the recognition of a branch head in terms of paragraph (a). 30

(7) Where there is evidence or an allegation that the election or identification of a person referred to in subsection (1) was not done in accordance with the rules and procedures contemplated in subsection (3) or customary law and customs, the Premier concerned—

(a) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one Khoi-San member of the provincial house, to provide a report on whether the identification or election of the person referred to in subsection (1) was done in accordance with customary law and customs or the rules and procedures contemplated in subsection (3) and if not, which person should be so identified or whether a new election should be held; and 35 40

(b) must, where the findings of the investigative committee indicate that the identification or election of the person referred to in subsection (1) was not done in terms of customary law and customs or the rules and procedures contemplated in subsection (3), refer the report contemplated in paragraph (a) to the royal family or Khoi-San council, as the case may be, for its comments. 45

(8) The Premier concerned may, after having considered the report of the investigative committee as well as the comments of the royal family or Khoi-San council—

(a) recognise a person as a senior Khoi-San leader or a branch head; or 50

(b) advise the Khoi-San council that the election of a senior Khoi-San leader or branch head was not done in terms of customary law and customs or in accordance with the rules and procedures contemplated in subsection (3) and that a re-election must be held within the time determined by the Premier.

(9) (a) A Premier must on an annual basis, or when requested by the Minister, provide the Minister with a report on the recognition of Khoi-San leaders and branch heads. 55

(b) A copy of the report referred to in paragraph (a) must be submitted to the relevant provincial house for noting.

#### **Withdrawal of recognition of senior Khoi-San leader or branch head**

**11.** (1) The recognition of a senior Khoi-San leader or branch head, subject to the provisions of subsection (2)— 60

- (a) must be withdrawn if he or she—
  - (i) has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
  - (ii) is declared mentally unfit or mentally disordered by a court; or
- (b) may be withdrawn if he or she—
  - (i) has been removed from office in terms of the code of conduct; or
  - (ii) has transgressed customary law or customs, on a ground that warrants withdrawal of recognition; and
- (c) must be withdrawn if so ordered by a court.

(2)(a) Whenever any of the grounds referred to in subsection (1) come to the attention of the royal family or Khoi-San council, as the case may be, the royal family or Khoi-San council must, within 90 days from the date of becoming aware of such grounds and through the relevant customary structure inform the Premier of the province where the royal family or branch is situated of the particulars of such senior Khoi-San leader or branch head and of the particulars relating to the specific ground referred to in subsection (1).

(b) Whenever any of the grounds referred to in subsection (1)(b) come to the attention of the royal family or Khoi-San council, the royal family or Khoi-San council may recommend the withdrawal of the recognition of the senior Khoi-San leader or branch head and must furnish the Premier with reasons for such recommendation.

(3)(a) When the Premier is informed of the presence of any of the grounds referred to in subsection (1)(a), the Premier must, subject to subsections (4) and (5), withdraw the recognition of the relevant senior Khoi-San leader or branch head.

(b) When the Premier is informed of the presence of any of the grounds referred to in subsection (1)(b), the Premier may—

- (i) after having considered the information referred to in subsection (2)(a); and
- (ii) where applicable, after having considered any recommendation and reasons as contemplated in subsection (2)(b),

withdraw the recognition of the senior Khoi-San leader or branch head or refuse to withdraw such recognition: Provided that if the Premier refuses to withdraw such recognition, he or she must in writing provide reasons to the royal family or Khoi-San council, as the case may be.

(4) When the Premier withdraws the recognition of a senior Khoi-San leader or branch head, the Premier must—

- (a) cause a notice with particulars of such senior Khoi-San leader or branch head and the date on which such withdrawal takes effect to be published in the *Provincial Gazette*; and
- (b) inform the royal family or Khoi-San council concerned and the senior Khoi-San leader or branch head concerned of such withdrawal.

(5)(a) Where there is evidence or an allegation that the withdrawal of the recognition of a senior Khoi-San leader or branch head was not based on any of the grounds set out in subsection (1), or that the information which was brought to the Premier's attention in accordance with subsection (2)(a) was provided in bad faith, or that a recommendation made by the royal family or Khoi-San council as contemplated in subsection (2)(b) was done in bad faith, the Premier must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one Khoi-San member of the relevant provincial house, to provide a report as well as recommendations on whether the withdrawal of the recognition of the senior Khoi-San leader or branch head was done in accordance with the grounds set out in subsection (1), or whether the information brought to the attention of the Premier was done in bad faith or not, or whether the recommendation of the royal family or Khoi-San council was made in bad faith or not.

(b) Where the report of the investigative committee indicates that the withdrawal of the recognition of the senior Khoi-San leader or branch head was not done in accordance with any of the grounds set out in subsection (1), or that the information brought to the Premier's attention was done in bad faith, or that the recommendation of the royal family or Khoi-San council was made in bad faith, the Premier must refer the report to the royal family or Khoi-San council, as the case may be, for its comments and the royal family or Khoi-San council must provide the Premier with written comments within 60 days from the date of referral.

(c) The Premier may, after having considered the report of the investigative committee as well as the comments of the royal family or Khoi-San council where applicable—

- (i) refuse to withdraw the recognition of a senior Khoi-San leader or branch head if the information provided or the recommendations made by the royal family or Khoi-San council were done in bad faith; or
  - (ii) by notice in the Provincial *Gazette*, confirm the withdrawal of recognition of the senior Khoi-San leader or branch head concerned or revoke such withdrawal of recognition: Provided that if the withdrawal of recognition is revoked, the relevant senior Khoi-San leader or branch head shall consequentially be regarded as reinstated from the date on which the recognition was withdrawn. 5
- (6) If a senior Khoi-San leader or branch head whose recognition has been withdrawn— 10
- (a) occupied a position of hereditary leadership as contemplated in section 7(2)(e)(i), a successor or an acting senior Khoi-San leader as contemplated in section 13(1), as the case may be, must be identified by the royal family in accordance with the provisions of section 10 or 13 respectively; or
  - (b) was elected as contemplated in section 7(2)(e)(ii), a successor must be elected by the Khoi-San council in accordance with the provisions of section 10: Provided that a person elected as branch head in terms of this paragraph is elected for the unexpired term of his or her predecessor. 15
- (7) (a) Where the royal family or Khoi-San council, as the case may be, recommended the withdrawal of the recognition of a branch head who resides in a province other than the province where the Khoi-San council is situated, the Premier of the province where the Khoi-San council is situated must request the Premier of the province that recognised the branch head to withdraw the recognition of such branch head. 20
- (b) The provisions of subsections (4) and (5) apply to a withdrawal in terms of paragraph (a). 25

### Recognition of regent

12. (1) Where the hereditary successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader identified in terms of sections 8 or 10, as the case may be, is regarded as a minor—
- (a) the royal family concerned must, within 90 days of the death of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader— 30
    - (i) identify a regent to assume leadership on behalf of the minor, after taking into account whether, in the case of a regent to the position of a king, queen, principal traditional leader, senior traditional leader, headman or headwoman any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14) apply to such regent, or whether, in the case of a regent to a senior Khoi-San leader, any of the grounds referred to in section 11(1) or 16(14) apply to such regent; and 35
    - (ii) through the relevant customary structure and with due regard to applicable customary law and customs, inform the Premier concerned of the particulars of the person identified as regent and the reasons for the identification of that person; and 40
  - (b) the Premier concerned must, with due regard to applicable customary law or customs and subject to subsections (2) and (3), recognise the regent identified by the royal family in respect of the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader: 45
- Provided that the recognition of a regent must be reviewed by the Premier concerned at least every two years. 50
- (2) Where the royal family fails to identify a regent as contemplated in subsection (1), the Premier must, after consultation with the royal family and after taking into account whether any of the grounds contemplated in subsection (1)(a)(i) apply to such person, identify a suitable person as regent.
- (3) Whenever a Premier recognises a regent as contemplated in subsection (1), he or she must— 55
- (a) publish a notice in the relevant Provincial *Gazette* recognising the person identified as regent in terms of subsection (1);
  - (b) issue a certificate of recognition to the identified regent; and
  - (c) inform the relevant provincial house of the recognition of a regent. 60
- (4) A regent is responsible for the performance of the functions that are attached to the relevant position and is entitled to the salary and allowances attached to such position.

- (5) The provisions of section 10(7) apply with the necessary changes in respect of a regent identified for a senior Khoi-San leader.
- (6) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law or customs, the Premier concerned— 5
- (a) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and 10
  - (b) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in paragraph (a) to the royal family for its comments. 15
- (7) The Premier concerned may, after having considered the report of the investigative committee as well as the comments of the royal family, recognise a person as a regent.
- (8) As soon as the successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader ceases to be a minor, the regent recognised in terms of subsection (1) must relinquish his or her position as regent, and the rightful successor— 20
- (a) in the case of a king or queen, must be recognised by the President after consultation with the Minister as contemplated in section 8(1)(b), and a certificate of recognition as contemplated in section 8(3)(b) must be issued after his or her name has been published in the *Gazette*; 25
  - (b) in the case of a principal traditional leader, senior traditional leader, headman or headwoman, must be recognised by the Premier concerned in terms of section 8(1)(c) or 8(2)(d), as the case may be, and a certificate of recognition contemplated in section 8(3)(b) must be issued after his or her name has been published in the relevant Provincial *Gazette*; or 30
  - (c) in the case of a senior Khoi-San leader, must be recognised by the Premier concerned in terms of section 10(5)(a), and a certificate of recognition contemplated in section 10(5)(b) must be issued after his or her name has been published in the relevant Provincial *Gazette*. 35
- (9) Where a regent has been recognised in respect of the position of a king or queen, the Premier concerned must inform the President and the Minister—
- (a) of the particulars of the regent;
  - (b) when the regent is supposed to relinquish his or her position as regent; and
  - (c) if applicable, of the withdrawal of the recognition of the regent. 40
- (10) If the successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader dies while still being a minor, the regent automatically and immediately relinquish his or her position.
- (11) In instances where— 45
- (a) the position of a king, queen, senior traditional leader, headman, headwoman or senior Khoi-San leader has been recognised for the first time in terms of sections 8 or 10, as the case may be;
  - (b) such leadership position is regarded as hereditary in nature; and
  - (c) the person identified or elected to assume such leadership position is a minor, 50
- the provisions of this section apply with the necessary changes.

### **Recognition of acting traditional and Khoi-San leaders**

- 13.** (1) Within 90 days of becoming aware of any of the instances mentioned in subparagraphs (i), (ii) and (iii)—
- (a) a royal family must identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman or headwoman, after taking into account whether any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14) apply to such person; or 55
  - (b) a royal family or Khoi-San council, as the case may be, must identify a suitable person to act as a senior Khoi-San leader or branch head, as the case 60

- may be, after taking into account whether any of the grounds referred to in section 11(1) or 16(14) apply to such a person,
- where—
- (i) a successor—
    - (aa) to the hereditary position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader has not been identified by the royal family concerned in terms of section 8 or 10, as the case may be; or
    - (bb) to the position of senior Khoi-San leader or branch head has not been elected by the Khoi-San council as contemplated in section 10(1)(b);
  - (ii) the identification of a successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head is being dealt with in terms of section 8(4) or 10(7), as the case may be; or
  - (iii) a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, as the case may be, is unable to perform his or her functions under circumstances other than those provided for in section 14 for—
    - (aa) the treatment of illness for a period of more than three months;
    - (bb) study purposes for a period of more than three months; or
    - (cc) any other lawful purpose.
- (2) Where the royal family or Khoi-San council fails to identify a suitable person as contemplated in subsection (1), the Premier must, after consultation with the royal family or Khoi-San council, as the case may be, and after taking into account whether any of the grounds contemplated in subsection (1) apply to such person, identify a suitable person to act as a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, as the case may be.
- (3) Where a person has been identified to act as a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head, the royal family or Khoi-San council, as the case may be, must, within seven days of the identification of an acting person, inform the Premier concerned of the particulars of the person so identified and the reasons for the identification of that person.
- (4) A person identified to act as a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head must, subject to subsection (5), be recognised by the Premier concerned by notice in the relevant Provincial *Gazette* and the Premier must—
- (a) issue a certificate of recognition to the person identified to act in a particular position; and
  - (b) inform the Minister of the recognition of an acting king or queen and inform the relevant provincial house of the recognition of any other acting leader:
- Provided that an acting recognition must be reviewed at least every two years by the Premier concerned.
- (5) (a) Where there is evidence or an allegation that the identification of a person as acting king, queen, principal traditional leader, senior traditional leader, headman or headwoman was not done in accordance with customary law or customs, the Premier concerned—
- (i) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and
  - (ii) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in subparagraph (i) to the royal family for its comments.
- (b) The provisions of section 10(7) apply with the necessary changes in respect of the identification of an acting senior Khoi-San leader or branch head.
- (6) A person who has been recognised as an acting king, queen, principal traditional leader, senior traditional leader, headman, headwoman, senior Khoi-San leader or branch head in terms of this section, is responsible for the performance of the functions that are attached to the relevant position and is entitled to the salary and allowances attached to such position: Provided that the king, queen, principal traditional leader,

senior traditional leader, headman, headwoman, senior Khoi-San leader and branch head in whose stead a person has been recognised to act in terms of this section, is not entitled to any salary and allowances attached to the relevant position for the duration of the recognition of the person so acting.

(7) Where a person has been identified as an acting king or queen, the Premier concerned must inform the President and the Minister of— 5

- (a) the acting recognition; and
- (b) if applicable, the withdrawal of recognition of the person who has been identified as an acting king or queen.

(8) Whenever the successor to a leadership position has been identified or elected as contemplated in subparagraph (i) of subsection (1), or an investigation as contemplated in subparagraph (ii) of subsection (1) has been finalised, or the circumstances referred to in subparagraph (iii) of subsection (1) are no longer applicable, any relevant acting recognition shall automatically lapse on the date on which the relevant leader referred to in subparagraph (i) or (ii) of subsection (1) is recognised by notice in the *Gazette* or Provincial *Gazette*, as the case may be, or the date on which the leader referred to in subparagraph (iii) of subsection (1) resumes his or her functions. 10 15

### **Recognition of deputy traditional and Khoi-San leaders**

**14.** (1) Any senior traditional leader, headman or headwoman who occupies a hereditary position must, with the concurrence of the relevant royal family, within 90 days of any of the circumstances set out in paragraphs (a) to (f) occurring, identify a deputy to act in his or her stead whenever that senior traditional leader, headman or headwoman— 20

- (a) becomes a full-time member of a municipal council;
- (b) is elected as a member of a provincial legislature; 25
- (c) is elected as a member of the National Assembly;
- (d) is appointed as a permanent delegate in the National Council of Provinces;
- (e) holds a full-time position in any house of traditional and Khoi-San leaders; or
- (f) is employed on a full-time basis by any employer: 30

Provided that such senior traditional leader, headman or headwoman must, prior to the identification of a deputy, take into account whether any of the grounds referred to in section 9(1) or 16(11)(h) or 16(14) apply to such deputy.

(2) Where the senior traditional leader, headman or headwoman fails to identify a suitable person as contemplated in subsection (1), the Premier must, after consultation with the relevant leader and royal family, and after taking into account whether any of the grounds contemplated in subsection (1) apply to such person, identify a suitable person as deputy. 35

(3) A hereditary senior Khoi-San leader must, with the concurrence of the relevant royal family, within 90 days of any of the circumstances set out in subsection (1)(a) to (f) occurring, identify a suitable person as deputy to act in the stead of that senior Khoi-San leader: Provided that such senior Khoi-San leader must, prior to the identification of a deputy, take into account whether any of the grounds referred to in section 11(1) or 16(14) apply to such a person. 40

(4) Where the senior Khoi-San leader fails to identify a suitable person as contemplated in subsection (3), the Premier must, after consultation with the relevant leader and royal family, and after taking into account whether any of grounds contemplated in subsection (1) apply to such person, identify a suitable person as deputy. 45

(5) A royal family referred to in subsection (1) or (3) must, within seven days of the identification of a deputy and through the relevant customary structure, inform the Premier concerned of the particulars of the person identified as deputy traditional leader in terms of subsection (1) or deputy senior Khoi-San leader in terms of subsection (3), and the reasons for the identification of that person. 50

(6) The Premier concerned may, with due regard to applicable customary law or customs and subject to subsection (8), recognise the deputy identified in terms of subsection (1) or (3) and must— 55

- (a) issue a certificate of recognition to such deputy traditional leader or deputy senior Khoi-San leader; and
- (b) inform the relevant provincial house of the recognition of such deputy leader:

Provided that the recognition of a person as a deputy shall automatically lapse with effect from the date that the senior traditional leader, headman, headwoman or senior Khoi-San leader ceases to occupy a position referred to in subsection (1).

(7) The provisions of section 10(7) apply with the necessary changes in respect of the identification of a deputy senior Khoi-San leader. 5

(8) Where there is evidence or an allegation that the identification of a person as deputy senior traditional leader, headman or headwoman was not done in accordance with customary law or customs, the Premier concerned—

(a) must cause an investigation to be conducted by an investigative committee designated by the Premier which committee must include at least one member of the relevant provincial house, to provide a report on whether the identification of the person referred to in subsection (1) was done in accordance with customary law and customs and if not, which person should be so identified; and 10

(b) must, where the findings of the investigative committee indicate that the identification of the person referred to in subsection (1) was not done in terms of customary law and customs, refer the report contemplated in paragraph (a) to the royal family for its comments. 15

(9) Any recognition in terms of this section must be reviewed by the Premier concerned at least every two years in order to establish whether the reasons for having identified and recognised a deputy are still applicable. 20

(10) A person who has been recognised as a deputy in terms of this section is responsible for the performance of the functions that are attached to the relevant position and is entitled to the salary and allowances attached to such position: Provided that the senior traditional leader, headman, headwoman or senior Khoi-San leader in whose stead a person has been recognised as deputy in terms of this section, is not entitled to any salary and allowances attached to the relevant position for the duration of the recognition of such deputy. 25

### **Functions and resources of traditional and Khoi-San leaders**

**15.** (1) A traditional or Khoi-San leader performs the functions provided for— 30

(a) in terms of customary law and customs of the traditional or Khoi-San community concerned; and

(b) in terms of any applicable national or provincial legislation.

(2) The Minister may, taking into account a recommendation made by the Independent Commission for the Remuneration of Public Office-bearers in terms of section 8(4)(c) of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), and after consultation with all Premiers, by notice in the *Gazette* determine the resources to be made available to traditional and Khoi-San leaders as may be necessary to enable them to perform their functions effectively. 35 40

### **Part 3**

#### ***Traditional and Khoi-San councils***

#### **Establishment of kingship or queenship council, principal traditional council or traditional council**

**16.** (1) Once the President has recognised a kingship or a queenship, or a community has been deemed to be a principal traditional community as contemplated in section 63(8)(c), or the Premier has recognised a traditional community as contemplated in section 3, that kingship or queenship, principal traditional community or traditional community must, within a period of two years of such recognition or any such further period as the Minister, in the case of a kingship or a queenship, or a Premier, in the case of a principal traditional community or a traditional community, may determine by notice in the *Gazette* or *Provincial Gazette*, as the case may be, establish a kingship or queenship council, principal traditional council or traditional council, as the case may be: Provided that in any instance where a kingship or queenship, principal traditional community or traditional community has been recognised prior to the publication of the formula contemplated in subsection (2), the period of two years shall commence from the date of publication of such formula. 45 50 55



- (2) (a) A kingship or queenship council, a principal traditional council and a traditional council consists of the number of members as determined by the Minister, by formula published by notice in the *Gazette* after consultation with—
- (i) in the case of a kingship or queenship council or principal traditional council—
    - (aa) the king or queen, or principal traditional leader, as the case may be; 5
    - (bb) a forum of not more than five members of the royal family designated by the royal family; and
    - (cc) a forum of not more than 20 senior traditional leaders under the kingship or queenship or principal traditional community, designated by the senior traditional leaders from amongst themselves; 10
  - (ii) in the case of a traditional council, the relevant Premiers and provincial houses: Provided that the formula must be published in the *Gazette* within two years from the date of commencement of this Act.
- (b) At least a third of the members of a kingship or queenship council, principal traditional council or traditional council must be women: Provided that if this requirement cannot be met, the Minister may determine a lower threshold for the particular kingship or queenship council or the relevant Premier may determine a lower threshold for the particular principal traditional council or traditional council. 15
- (c) The membership of a kingship or queenship council, principal traditional council or traditional council comprises— 20
- (i) 60% of traditional leaders and members of the traditional community selected, subject to subsection (3) and in terms of that community's customs, by the king or queen, principal traditional leader or senior traditional leader who is an *ex officio* member and chairperson of the relevant council, taking into account the need for overall compliance with paragraph (b): Provided that if, in the case of traditional councils, there are no recognised headmen or headwomen, only community members must be selected; and 25
  - (ii) 40% of members elected in terms of paragraph (f) in the case of a kingship or queenship council or principal traditional council, or elected in terms of section 21 in the case of a traditional council. 30
- (d) The selection of the members of a kingship or queenship council, principal traditional council or traditional council as contemplated in this section must be finalised before the election of members as contemplated in this section, and the names of such selected members must be made public within 14 days from the date of such selection: Provided that any election in the case of a kingship or queenship council or principal traditional council must take place within 28 days of the names of the selected members having been made public and, in the case of a traditional council, within 21 days of the names of the selected members having been made public. 35
- (e) A kingship or queenship, principal traditional community or traditional community must, within 14 days of the date of an election, submit the names of the members that have been selected and elected to the Premier concerned. 40
- (f) Each traditional council falling within the area of jurisdiction of the kingship or queenship or principal traditional community concerned, must elect one person from the elected members of that council, to serve as a member referred to in paragraph (c)(ii): Provided that where the number of persons so elected are less than the number of members contemplated in paragraph (c)(ii), the traditional councils must each elect one additional person from amongst the elected members of that council: Provided further that where the number of persons so elected exceed the number of members contemplated in paragraph (c)(ii), the persons elected by the traditional councils must elect from amongst themselves the number of persons contemplated in paragraph (c)(ii). 45
- (3) (a) The forum contemplated in subsection (2)(a)(i)(bb) must assist the king or queen, principal traditional leader or senior traditional leader with the selection contemplated in subsection (2)(c)(i). 50
- (b) The selection of the members contemplated in subsection (2)(c)(i) by a king or queen, principal traditional leader or senior traditional leader is subject to the concurrence of the forum referred to in paragraph (a). 55
- (c) If there is no concurrence as referred to in paragraph (b), the king or queen, principal traditional leader or senior traditional leader, as the case may be, must submit the names of the persons who were nominated for selection as contemplated in paragraph (a) to the Premier concerned and the Premier must, after consultation with such leader and the forum referred to in paragraph (a), select the required number of members as contemplated in subsection (2)(c)(i). 60

(4) (a) (i) The term of office of the members of a traditional council, excluding the senior traditional leader, is not more than five years and must be aligned to the term of office of the National House: Provided that, notwithstanding anything to the contrary contained in any law, the term of any traditional council that was established and constituted prior to the commencement of this Act, will expire on 31 March 2022: 5  
 Provided further that any term of office of any such council constituted or established after the commencement of this Act, shall expire every five years on 31 March, calculated from 31 March 2022.

(ii) The term of office of the members of a kingship or queenship council or a principal traditional council, excluding the king or queen or principal traditional leader, is not more than five years and must be aligned to the term of office of the National House: 10  
 Provided that, notwithstanding anything to the contrary contained in any law, the term of any kingship or queenship council or principal traditional council that was established and constituted prior to the commencement of this Act, will expire on 30 April 2022: 15  
 Provided further that any term of office of any such council constituted or established after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2022.

(b) The selection of members in terms of subsection (2)(c)(i) must, in the case of a kingship or queenship council or principal traditional council, be finalised at least 60 days prior to the expiry of the term of office of members of such council, and in the case 20  
 of a traditional council, at least 45 days prior to the expiry of the term of office of the members of such council.

(5) (a) The Premier concerned must, by notice in the relevant Provincial *Gazette* and in accordance with this Act, recognise a kingship or queenship council, principal traditional council or traditional council for such kingship or queenship, principal 25  
 traditional community or traditional community and define its area of jurisdiction, indicating the portions of land forming part of such area of jurisdiction, and having regard to the provisions of section 3(1)(b) and (2)(a) in the case of a kingship or queenship: Provided that the Premier must inform the President and the Minister of any recognition of a kingship or queenship council: Provided further that the area of 30  
 jurisdiction of a traditional council must include the area of a traditional sub-council, where applicable.

(b) The notice referred to in paragraph (a) must contain the names of the council members.

(c) The area of jurisdiction contemplated in paragraph (a) must be mapped and such 35  
 map must be published under the notice referred to in paragraph (a).

(6) A kingship or queenship council, a principal traditional council and a traditional council convenes at the administrative seat of the particular council.

(7) The quorum of a kingship or queenship council, principal traditional council or traditional council consists of the majority of the total number of members of such 40  
 council: Provided that for the purposes of determining such quorum, the total number of members excludes any vacancies.

(8) A kingship or queenship council, principal traditional council or traditional council must elect one of its members as a deputy chairperson who will act as the chairperson in the absence of the king or queen, principal traditional leader or senior 45  
 traditional leader, as the case may be.

(9) (a) A kingship or queenship council or principal traditional council must meet once every three months and a traditional council must meet every two months: 50  
 Provided that the king or queen, principal traditional leader or senior traditional leader, as the case may be, may, with the concurrence of the relevant Premier, convene any additional ordinary or any special meeting of the relevant council.

(b) A king, a queen or a principal traditional leader must at least once a year meet with all senior traditional leaders falling under such kingship, queenship or principal traditional leadership.

(10) A king or queen, principal traditional leader or senior traditional leader, as the 55  
 case may be, must, for purposes of convening a special meeting, give notice of not less than seven days to members of the kingship or queenship council, principal traditional council or traditional council.

(11) A member of a kingship or queenship council, principal traditional council or traditional council must vacate his or her office if— 60

(a) he or she ceases to be a South African citizen;

(b) he or she has been convicted of an offence and sentenced to imprisonment for more than 12 months without the option of a fine;

- (c) he or she tenders his or her resignation;
  - (d) he or she is declared mentally unfit or mentally disordered by a court;
  - (e) the period for which the member was selected or elected, as the case may be, has expired;
  - (f) he or she becomes disqualified in terms of subsection (14); 5
  - (g) he or she has been removed from office in terms of the code of conduct;
  - (h) he or she no longer resides within the area of jurisdiction of the kingship or queenship council, principal traditional council or traditional council, as the case may be; or
  - (i) he or she is a selected member and his or her recognition as a traditional leader has been withdrawn. 10
- (12) If a member of a kingship or queenship council, principal traditional council or traditional council dies or vacates his or her office before the expiration of his or her term of office, such a vacancy must be filled in the manner referred to in subsection (2)(c)(i) or (ii), as the case may be, within 90 days of the vacancy having arisen. 15
- (13) A person who has been appointed to fill a vacancy in a kingship or queenship council, principal traditional council or traditional council as contemplated in subsection (12), holds office for the unexpired period of his or her predecessor's term of office.
- (14) A person is not eligible to be elected or selected as a member of a kingship or queenship council, principal traditional council or traditional council if that person— 20
- (a) is not a South African citizen;
  - (b) is under 18 years of age;
  - (c) has been convicted of an offence in respect of which he or she was sentenced to imprisonment for more than 12 months without the option of a fine; 25
  - (d) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors;
  - (e) is of unsound mind and has been so declared by a competent court;
  - (f) is or becomes a full-time member of a municipal council;
  - (g) is elected as a member of a provincial legislature; 30
  - (h) is elected as a member of the National Assembly;
  - (i) is appointed as a permanent delegate in the National Council of Provinces;
  - (j) is elected to a full-time position in any house of traditional leaders; or
  - (k) does not reside within the area of jurisdiction of the kingship or queenship council, principal traditional council or traditional council, as the case may be. 35
- (15) (a) The withdrawal of the recognition of a kingship or queenship, principal traditional community or traditional community in terms of section 4, automatically results in the disestablishment of the relevant kingship or queenship council, principal traditional council or traditional council and the withdrawal of the recognition of the relevant king or queen, principal traditional leader or senior traditional leader. 40
- (b) The disestablishment of a kingship or queenship council, principal traditional council or traditional council must be done by the Premier concerned by notice in the relevant Provincial *Gazette*.
- (16) The notice referred to in subsection (15)(b) must stipulate the legal, practical and other consequences of the disestablishment of a kingship or queenship council, principal traditional council or traditional council, including the transfer of assets, liabilities, staff, administrative and other records, taking into account any applicable legislation. 45
- (17) Any provision of this Act that relates to the establishment of a kingship or queenship council, principal traditional council, traditional council or traditional sub-council, apply to the initial establishment of such a council or sub-council and any subsequent reconstitution of the council or sub-council following the expiry of any term thereof: Provided that, subject to subsection (18) or (19), as the case may be, the provisions of subsection (5) and section 17(2) relating to areas of jurisdiction do not apply to the reconstitution of such a council or sub-council. 50
- (18) Whenever the area of jurisdiction of a traditional council is to be amended, the Premier must, after consultation with the relevant traditional council and municipal council, by notice in the Provincial *Gazette* redefine such area of jurisdiction. 55
- (19) Whenever the area of jurisdiction of a traditional sub-council is to be amended, the Premier must, after consultation with the relevant traditional council and sub-council, by notice in the Provincial *Gazette* redefine such area of jurisdiction. 60

### Establishment of traditional sub-council

17. (1) (a) Notwithstanding the provisions of section 16, the Premier concerned may at the request of a traditional council, in cases where a traditional community occupies two or more non-contiguous geographical areas within a province, establish a traditional sub-council for the geographical area which is located outside the area where the administrative seat of the traditional community is situated, if the Premier is of the view that such establishment will improve the effective administration of the traditional community. 5

(b) A traditional sub-council consists of the number of members as determined by the Premier concerned, after consultation with the main traditional council. 10

(2) The Premier concerned must, subject to the provisions of section 16(5), (17) and (19), by notice in the relevant Provincial *Gazette* recognise a traditional sub-council as part of the main traditional council and define its area of jurisdiction, indicating the portions of land forming part of such area of jurisdiction, which area must be mapped and such map must be published under such notice. 15

(3) (a) At least a third of the members of a traditional sub-council must be women.

(b) The members of a traditional sub-council must comprise of—

(i) 60% traditional leaders and members of the traditional sub-community, selected by the senior traditional leader concerned, in terms of that community's customs, taking into account the need for overall compliance with paragraph (a): Provided that if there are no recognised headmen or headwomen, only community members must be selected; and 20

(ii) 40% of members of the traditional sub-community who are elected by members of the traditional sub-community in accordance with the provisions of section 21. 25

(4) The provisions of section 16(2)(b) and (d) apply to the constitution and composition of a traditional sub-council and any reference in the said paragraphs to members of a traditional council shall be construed as a reference to members of a traditional sub-council.

(5) The chairperson of a traditional sub-council must be elected by the members of such sub-council. 30

(6) A chairperson elected in terms of subsection (5) must be a member of the traditional council.

(7) The term of office of members of a traditional sub-council is not more than five years and must be aligned with the term of office of the relevant traditional council: Provided that, notwithstanding anything to the contrary contained in any law, the term of any traditional sub-council that was established and constituted prior to the commencement of this Act, will expire on 30 April 2022: Provided further that any term of office of any such sub-council constituted or established after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2022. 35 40

(8) (a) A traditional sub-council must meet every two months and performs the functions referred to in section 20 as may be delegated to it by the traditional council concerned.

(b) A traditional sub-council must, in the format and within the timeframes as determined by the traditional council, submit a report to the traditional council on the performance of the functions delegated to it. 45

(9) (a) The withdrawal of the recognition of a community as a traditional community in terms of section 4, automatically results in the disestablishment of the traditional sub-council concerned.

(b) If, after consultation with a traditional council, a Premier is of the opinion that a traditional sub-council is no longer contributing to the effective administration of that traditional community, the Premier may withdraw the recognition of such traditional sub-council.

(c) The withdrawal of the recognition of a traditional sub-council must be done by the Premier concerned by notice in the relevant Provincial *Gazette*. 55

(d) The provisions of section 16(16) apply with the necessary changes to the withdrawal of the recognition of a traditional sub-council.

### Establishment of Khoi-San council

18. (1) Once a Premier or the Minister has recognised a Khoi-San community in accordance with the provisions of section 5 or 58 respectively, that community must 60

within a period of two years of such recognition or any further period as the Premier may determine by notice in the Provincial *Gazette*, establish a Khoi-San council: Provided that in any instance where a Khoi-San community has been recognised prior to the publication of the formula contemplated in subsection (2)(a), the period of two years shall commence from the date of publication of such formula. 5

(2) (a) A Khoi-San council consists of the number of members determined by the Minister by formula published in the *Gazette*, after consultation with all Premiers: Provided that the formula must be published in the *Gazette* within two years from the date of commencement of this Act.

(b) The members of a Khoi-San council must comprise of— 10

(i) 60% of members which consists of—

(aa) the senior Khoi-San leader concerned who is an *ex officio* member and chairperson of the Khoi-San council; and

(bb) where the main community has branches, branch heads: Provided that if the senior Khoi-San leader together with the branch heads is less than the required number of members, the senior Khoi-San leader must select the remainder from the members of the main community after consultation with the branch heads and, where there is a royal family, must also select from members of the royal family with the concurrence of a forum as contemplated in subparagraph (cc): Provided further that if the number of branch heads are more than the required number of members, the branch heads must elect the required number from amongst themselves, ensuring provincial representation; or 15

(cc) where the main community has no branches, the senior Khoi-San leader must, where applicable, with the concurrence of a forum of not less than five and not more than 10 members designated by the royal family, select the required number of members from the members of the royal family and members of the main community, or where there is no royal family, the senior Khoi-San leader must select the required number of members from the main community only: Provided that the provisions of section 16(3)(c) shall apply with the necessary changes to instances where there is no concurrence; 20

(ii) 40% of members which consist of members of the main community who are elected by the main community in accordance with the provisions of section 21. 25

(3) The Premier concerned must, by notice in the relevant Provincial *Gazette*, recognise a Khoi-San council for a Khoi-San community and indicate the administrative seat of such Khoi-San council. 30

(4) The jurisdiction of a Khoi-San council will apply only to the members of the Khoi-San community contemplated in section 5(1) and (3).

(5) The provisions of section 16(2)(b), (d) and (e), (5)(b), (7), (8), (11), (14)(a) to (j), (15) and (16) apply to a Khoi-San council and any reference in the said section to a traditional council, senior traditional leader and headmen or headwomen shall, respectively, be construed as a reference to a Khoi-San council, senior Khoi-San leader and branch head. 35

(6) Any provision of this Act that relates to the establishment of a Khoi-San council applies to the initial establishment of such a council and any subsequent reconstitution of the council following the expiry of any term thereof. 40

(7) A Khoi-San council must meet every three months: Provided that the senior Khoi-San leader may, with the concurrence of the Premier of the province where such council is recognised, convene any additional ordinary or any special meeting of the relevant council: Provided further that for the purposes of convening a special meeting, the senior Khoi-San leader must give notice of not less than seven days to the members of the relevant Khoi-San council. 45

(8) The term of office of the members of a Khoi-San council, excluding the senior Khoi-San leader, is, subject to section 63(19), not more than five years and must be aligned to the term of office of the National House: Provided that any term of office of any such council established after the commencement of this Act, shall expire every five years on 31 March, calculated from 31 March 2027. 50

### **Functions of kingship or queenship council and principal traditional council**

19. (1) A kingship or queenship council and principal traditional council have the following functions: 60

- (a) Administering the affairs of the kingship or queenship or principal traditional community in accordance with customary law and customs;
  - (b) assisting, supporting and guiding senior traditional leaders and traditional councils falling within the jurisdiction of the kingship or queenship or principal traditional community concerned in the performance of their functions; 5
  - (c) assisting the king or queen, or principal traditional leader in performing customary functions in relation to the recognition of senior traditional leaders, where applicable;
  - (d) assisting the king or queen, or principal traditional leader in mediating disputes between senior traditional leaders falling within the jurisdiction of the kingship or queenship or principal traditional community; 10
  - (e) promoting unity between traditional communities falling under the jurisdiction of the kingship or queenship or principal traditional community; and
  - (f) assisting the king or queen, or principal traditional leader in performing his or her roles and functions conferred upon him or her in terms of regulations made in accordance with the provisions of section 60. 15
- (2) A kingship or queenship council or principal traditional council must—
- (a) keep proper records;
  - (b) have its financial statements audited by a registered auditor as contemplated in the Auditing Profession Act, 2005 (Act No. 26 of 2005), and submit such audited statements to the Premier within two months from the date of receipt thereof; 20
  - (c) disclose to the Premier concerned, the receipt of gifts with a value above an amount as may be determined by the Minister by notice in the *Gazette*; 25
  - (d) adhere to the code of conduct; and
  - (e) advise and support all traditional councils falling under its authority.
- (3) (a) If an audit contemplated in subsection (2)(b) is not performed by the Auditor-General, the Auditor-General may review any such audit.
- (b) If any kingship or queenship council or principal traditional council does not have its financial statements audited as contemplated in subsection (2)(b), the accounting officer of the provincial department responsible for providing financial support to such council may withhold any financial support to such council or impose any other appropriate sanction on the council. 30

### **Functions of traditional council, traditional sub-council, Khoi-San council and branch** 35

- 20.** (1) A traditional council, a traditional sub-council subject to section 17(8), a Khoi-San council and a branch have the following functions:
- (a) Administering the affairs of the traditional or Khoi-San community in accordance with customs and tradition; 40
  - (b) assisting, supporting and guiding traditional and Khoi-San leaders in the performance of their functions;
  - (c) supporting municipalities in the identification of community needs;
  - (d) facilitating the involvement of the traditional or Khoi-San community in the development or amendment of the integrated development plan of a municipality in whose area that community resides; 45
  - (e) recommending, after consultation with the relevant local and provincial houses, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council or within the municipal area where the administrative seat of the Khoi-San council is; 50
  - (f) participating in the development of policy and legislation at a municipal level;
  - (g) participating in development programmes of the local, provincial and national spheres of government;
  - (h) promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery; 55
  - (i) promoting indigenous knowledge systems for sustainable development and disaster management;
  - (j) alerting any relevant municipality to any hazard or calamity, and contributing to disaster management in general; 60

- (k) sharing information and co-operating with other traditional and Khoi-San councils; and
  - (l) performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.
- (2) A traditional and Khoi-San council must— 5
- (a) keep proper records;
  - (b) have its financial statements audited by a registered auditor as contemplated in the Auditing Profession Act, 2005 (Act No. 26 of 2005), and submit such audited statements to the Premier within two months from the date of receipt thereof; 10
  - (c) disclose to the Premier concerned, the receipt of gifts with a value above an amount as may be determined by the Minister by notice in the *Gazette*; and
  - (d) adhere to the code of conduct.
- (3) A traditional and Khoi-San council must—
- (a) co-operate with any relevant ward committee established in terms of section 15 73 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and
  - (b) respectively meet at least once a year with the relevant traditional or main Khoi-San community to give account of the activities and finances of the traditional or Khoi-San council. 20
- (4) (a) If an audit contemplated in subsection (2)(b) is not performed by the Auditor-General, the Auditor-General may review any such audit.
- (b) If any traditional or Khoi-San council does not have its financial statements audited as contemplated in subsection (2)(b), the accounting officer of the provincial department responsible for providing financial support to such council may withhold 25 any financial support to such council or impose any other appropriate sanction on the council.

#### **Election of members of traditional council, traditional sub-council and Khoi-San council and filling of vacancies**

- 21.** (1) Whenever a member of a traditional council, traditional sub-council or Khoi-San council is to be elected, the Premier concerned, after consultation with the relevant provincial house, may have such elections conducted— 30
- (a) by the Electoral Commission established in terms of the Electoral Commission Act, 1996 (Act No. 51 of 1996), if the Electoral Commission and the Premier of the province concerned enters into an agreement in respect of such 35 elections, which agreement must include provisions relating to the manner in which the elections are to be conducted: Provided that this paragraph does not apply to the filling of a vacancy that occurs during the term of office of the council concerned; or
  - (b) subject to subsection (2)— 40
    - (i) by way of a community meeting; or
    - (ii) by a body consisting of one or more persons appointed by the Premier.
- (2) A Premier may, by notice in the relevant Provincial *Gazette*, make regulations in respect of—
- (a) the elections as contemplated in subsection (1)(b) relating to the procedure to 45 be followed and timeframes within which such elections must be conducted; and
  - (b) subject to the provisions of this Act, the filling of vacancies.

#### **Administration of kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council** 50

- 22.** (1) A kingship or queenship council, principal traditional council, traditional council, traditional sub-council and a Khoi-San council (in this section jointly referred to as a council) must endeavor to perform its statutory, financial and customary obligations in the best interest of its community and is accountable to the Premier concerned for the efficient and effective performance of such obligations. 55
- (2) A Premier must monitor a council situated within his or her province so as to ensure the effective and efficient performance of that council's statutory, financial and customary obligations.

- (3) If a Premier is of the view that a council does not or cannot fulfill a statutory, financial or customary obligation binding on that council, the Premier must—
- (a) by written notice, request the council to provide the Premier with the information relating to the council's performance in respect of the obligation required in the notice; or 5
  - (b) if the Premier considers it necessary, designate a person or persons to investigate the matter.
- (4) If, based on the information received or investigation conducted as contemplated in subsection (3), a Premier is satisfied that a council does not or cannot fulfill its statutory, financial or customary obligations, the Premier may intervene by appointing any person or persons for a period determined by the Premier in writing— 10
- (a) to assist the council concerned to perform any or all of the statutory, financial and customary obligations assigned to such council; or
  - (b) to assume responsibility for any or all the statutory, financial and customary obligations of such council. 15
- (5) If a person or persons are appointed in terms of subsection (4), the council concerned is divested of the specific or all of its statutory, financial and customary obligations, as the case may be.
- (6) A person or persons appointed in terms of subsection (4) must be competent to perform either the statutory, financial or the customary obligations of such council or both, as the case may be. 20
- (7) (a) A person or persons appointed in terms of subsection (4) must submit monthly written reports to the Premier concerned setting out the steps taken and progress made in respect of the performance of the specific or all of the council's statutory, financial and customary obligations, as the case may be. 25
- (b) A Premier must submit copies of the reports contemplated in paragraph (a) to the National House and relevant provincial house for noting.
- (8) An appointment made in terms of subsection (4) must be reviewed before the expiry of a period of 180 days: Provided that such a period may, as many times as the Premier concerned deems necessary to ensure the efficient and effective performance of the specific or all of the relevant council's statutory, financial and customary obligations, be renewed for a further period of 180 days and must be reviewed before the expiry of any such period of 180 days. 30

**Support to kingship or queenship council, principal traditional council, traditional council, Khoi-San council and traditional sub-council** 35

- 23.** (1) The national government may and a provincial government must adopt such legislative or other measures as may be necessary to—
- (a) support and strengthen the capacity of kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils to fulfil its functions, and such support includes the provision of administrative and financial support; and 40
  - (b) monitor and manage the finances of such councils: Provided that the Department must, subject to section 62, monitor the management of the finances of such council.
- (2) The Premier of a province may, after consultation with a kingship or queenship council, principal traditional council, traditional council or Khoi-San council situated in the particular province— 45
- (a) determine the number and remuneration levels of posts needed to perform the administrative, financial and related duties relevant to the functions of the specific council; 50
  - (b) determine any other conditions of service applicable to such posts; and
  - (c) appoint suitable persons in such posts in accordance with the recruitment procedures applicable to that provincial government or second officials from the provincial government to perform such duties.
- (3) (a) For the purposes of subsection (1) a Premier must, in consultation with the relevant Provincial Treasury and subject to any legislative or other measures as contemplated in subsection (1), cause to be opened an account for each established council referred to in subsection (1) into which must be paid— 55
- (i) all voluntary contributions made by members of the relevant community;
  - (ii) all moneys derived from any property owned or managed by such council; 60
  - (iii) any financial donation made to such council by any person, body or institution;



- (iv) any moneys payable to the council in accordance with the provisions of a partnership or agreement as contemplated in section 24; and
  - (v) any other moneys as may be determined or agreed to by the Premier.
- (b) For the purposes of the management of any account referred to in paragraph (a), a Premier must, in consultation with the relevant Provincial Treasury and subject to paragraph (c) and any legislative or other measures as contemplated in subsection (1), determine—
- (i) the financial systems and controls applicable to such account;
  - (ii) any conditions applicable to such account;
  - (iii) the investment of any moneys by the council concerned;
  - (iv) the payment of any expenditure by the council concerned;
  - (v) the purposes for which any moneys in such account may be used by the relevant council;
  - (vi) the closure of any other accounts, including a trust account but excluding a trust account as contemplated in section 10 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), and the transfer of any moneys in such other account or trust account to the account contemplated in paragraph (a);
  - (vii) the reporting requirements applicable to such account; and
  - (viii) any other measures as may be deemed necessary by the Premier to ensure the efficient and effective management of such account,
- and may designate any official from the provincial government to assist the council concerned with the management of such account or to manage such account on behalf of the relevant council: Provided that for the purposes of subparagraphs (ii) to (vii) the Premier must consult the relevant council prior to making any determination as contemplated in those subparagraphs.
- (c) The Minister must, in consultation with the Minister of Finance and after consultation with the Premiers, by notice in the *Gazette* determine the minimum standards to be complied with by a Premier for the purposes of paragraph (b)(i) to (vii).
- (d) The financial year of any council contemplated in this section must be aligned to the financial year of the provincial department responsible for providing financial support to such council.
- (4) (a) The provincial government of a province where a branch of a Khoi-San community has been recognised must adopt such legislative or other measures as may be necessary to provide administrative support to such branch: Provided that if a branch is situated in a province other than the province where the Khoi-San council has been recognised, the Premier of the province where the branch is situated must first consult the Premier of the province where the Khoi-San council is situated to ensure uniformity in the provisioning of such administrative support.
- (b) The provincial government of a province where a branch of a Khoi-San community has been recognised is responsible for the financial expenditure in relation to the attendance of Khoi-San council meetings by the relevant branch head.

### Partnerships and agreements

- 24.** (1) The national government and provincial governments may, through legislative or other measures, regulate partnerships and agreements as contemplated in this section.
- (2) Kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils and traditional sub-councils may enter into partnerships and agreements with each other, and with—
- (a) municipalities;
  - (b) government departments; and
  - (c) any other person, body or institution.
- (3) Any partnership or agreement entered into by any of the councils contemplated in subsection (2) must be in writing and, notwithstanding the provisions of any other law,—
- (a) must be beneficial to the community represented by such council;
  - (b) must, in addition to any other provisions, contain clear provisions on the responsibilities of each party and the termination of such partnership or agreement;
  - (c) is subject to—
    - (i) a prior consultation with the relevant community represented by such council;

- (ii) a decision in support of the partnership or agreement taken by a majority of the community members present at the consultation contemplated in subparagraph (i); and
- (iii) a prior decision of such council indicating in writing the support of the council for the particular partnership or agreement; 5
- (d) is subject to ratification by the Premier of the province in which the relevant council is situated and will have no effect until such ratification has been obtained; and
- (e) may not bind the state or any person, body or institution who is not a party to such partnership or agreement. 10
- (4) Any partnership or agreement contemplated in subsection (2) must—
  - (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and
  - (b) be guided by and based on the principles of co-operative governance.
- (5) Any council contemplated in subsection (2), may enter into a service delivery agreement with a municipality in accordance with the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and any other applicable legislation. 15
- (6) A Premier must—
  - (a) monitor all partnerships and agreements as contemplated in this section and may take the necessary steps to ensure the effective and efficient implementation or termination thereof; 20
  - (b) provide the Minister with copies of all partnerships or agreements contemplated in subsection (3)(d) which copies must be kept by the Department in an appropriate database; and
  - (c) review all partnerships and agreements as contemplated in section 63(22). 25
- (7) (a) A Premier, when considering the ratification of any partnership or agreement as contemplated in subsection (3)(d), must be satisfied that the provisions of subsection (3)(a), (b), (c) and (e) have been complied with.
- (b) If a Premier is of the opinion that a partnership or agreement does not comply with the provisions of subsection (3)(a), (b), (c) or (e), the Premier must refer such partnership or agreement to the parties who entered into such partnership or agreement, together with his or her reasons for not ratifying the partnership or agreement, and request them to rectify any shortcomings as referred to in his or her reasons. 30

**Allocation of roles to kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders** 35

25. (1) A department within the national or provincial sphere of government, as the case may be, may, through legislative or other measures provide a role for a kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders in respect of any functional area of such department: Provided that such a role may not include any decision-making power. 40
- (2) (a) The process and procedure to be followed for the provision of a role contemplated in subsection (1) to any of the councils or leaders contemplated in that subsection, as well as the extent thereof, and the conditions and resources attached to any such provision, may, subject to paragraph (b), be determined by the department concerned. 45
- (b) Before a department makes provision for a role as contemplated in subsection (1), such department must—
- (i) in the case of a national department, obtain the concurrence of the Minister and consult with the National House; and 50
  - (ii) in the case of a provincial department, obtain the concurrence of the member of the Executive Council responsible for traditional affairs of the relevant province and consult with the relevant provincial and local houses.
- (3) Where a department has made provision for a role for any council or leader contemplated in subsection (1), such department must monitor the execution of the role and ensure that— 55
- (a) the execution of the role is consistent with the Constitution and any other relevant law; and
  - (b) the role is being executed efficiently and effectively. 60

(4) Where any of the councils or leaders contemplated in subsection (1) does not execute a role as envisaged in subsection (3), such role or any resources provided to such a council or leader to perform that role may be withdrawn by the department concerned: Provided that before any such withdrawal, the relevant department must first establish the reasons for the non-execution of the relevant role and, where necessary, capacitate such councils or leaders to enable them to execute the role. 5

(5) (a) When a national or provincial department has made provision for a role as contemplated in subsection (1), such department must inform the Department of—

- (i) the extent thereof;
- (ii) the conditions and resources attached thereto; and 10
- (iii) the name of the relevant council or leader.

(b) When a national or provincial department withdraws a role or resources as contemplated in subsection (4), such department must inform the Department of the reasons for such withdrawal.

(c) The Department must keep proper records of the information contemplated in paragraphs (a) and (b). 15

(6) The allocation or withdrawal of a role as contemplated in this section must be published for noting in the *Gazette* or *Provincial Gazette*, as the case may be, by the relevant department.

## CHAPTER 3 20

### HOUSES OF TRADITIONAL AND KHOI-SAN LEADERS

#### *Part 1*

#### *Houses of traditional and Khoi-San leaders*

#### **Houses of traditional and Khoi-San leaders**

26. The houses of traditional and Khoi-San leaders are— 25

- (a) a National House of Traditional and Khoi-San Leaders established in terms of section 27;
- (b) provincial houses of traditional and Khoi-San leaders as may be established in accordance with the principles set out in section 49; and
- (c) local houses of traditional and Khoi-San leaders as may be established in accordance with the principles set out in section 50. 30

#### *Part 2*

#### *National House of Traditional and Khoi-San Leaders*

#### **Establishment and term of office of National House**

27. (1) There is hereby established a National House to be known as the National House of Traditional and Khoi-San Leaders. 35

(2) The term of office of the National House is five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 63(12), the term of the National House that was established in terms of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009), prior to the commencement of this Act, will expire on 30 June 2022: Provided further that any subsequent term of office of the National House as reconstituted after the commencement of this Act, shall expire every five years on 30 June, calculated from 30 June 2022. 40

#### **Composition of National House**

28. (1) (a) The National House consists of senior traditional and senior Khoi-San leaders— 45

- (i) elected by each provincial house in accordance with the provisions of paragraph (b) and section 29; and
- (ii) where relevant, of persons contemplated in subsection (2).

(b) In a province where a provincial house has been established and there are— 50

- (i) only senior traditional leaders, the provincial house must elect three senior traditional leaders as members of the National House; or
  - (ii) only senior Khoi-San leaders, the provincial house must elect three senior Khoi-San leaders as members of the National House; or
  - (iii) more senior traditional leaders than senior Khoi-San leaders, the provincial house must elect three senior traditional leaders and one senior Khoi-San leader as members of the National House; or
  - (iv) more senior Khoi-San leaders than senior traditional leaders, the provincial house must elect three senior Khoi-San leaders and one senior traditional leader as members of the National House; or
  - (v) an equal number of senior traditional leaders and senior Khoi-San leaders, the provincial house must elect two senior traditional leaders and two senior Khoi-San leaders as members of the National House; or
  - (vi) two or less than two of either or of both senior traditional leaders and senior Khoi-San leaders, such leaders are *ex officio* members of the National House.
- (2) In a province where a provincial house has not been established—
- (a) the senior traditional leaders or the senior Khoi-San leaders or the senior traditional leaders and the senior Khoi-San leaders, as the case may be in the particular province, must, at a meeting convened by the relevant Premier, elect from amongst themselves representatives to the National House in accordance with the representation numbers as contemplated in subsection (1)(b)(i) to (v); or
  - (b) where there are two or less than two of either or of both senior traditional leaders and senior Khoi-San leaders in such province, such leaders are *ex officio* members of the National House.
- (3) At least a third of the members of the National House must consist of women: Provided that if this requirement cannot be met, the Minister must, after consultation with the Premiers concerned and the relevant provincial houses, determine a lower threshold in respect of the representation of women in the National House.

### **Election and designation of members to National House**

- 29.** (1) The Minister must, at least 30 days before the expiry of the term of office of the National House, request the Premiers to notify provincial houses to elect subject to section 28, senior traditional leaders and where applicable, senior Khoi-San leaders to serve as members in the National House.
- (2) The members of a provincial house referred to in section 28(1) must be elected, within 21 days after having received the notice from the Premier concerned in terms of subsection (1), by members of that provincial house in a meeting called for that purpose and attended by at least two-thirds of the members of the house concerned: Provided that the members of a provincial house referred to in section 28(1)(a)(i) and (b), may not be full-time members of such provincial house.
- (3) The election proceedings referred to in subsection (2) must be managed and chaired by the Premier concerned or a person designated by such Premier, and must be observed by officials of the National House and the provincial department responsible for traditional affairs.
- (4) An election contemplated in subsection (2) must be by secret ballot by members of the provincial house concerned in the same meeting where the nominations take place.
- (5) Each provincial house must elect one of the members contemplated in subsection (2) as leader of the elected members.
- (6) A Premier must submit to the Minister, in respect of every person elected and designated, such person's—
- (a) acceptance of the election or designation;
  - (b) full name and surname;
  - (c) identity number; and
  - (d) contact details.
- (7) In the event that a provincial house fails to elect one or more of its members to serve in the National House within the period referred to in subsection (2), the Premier concerned must designate members of the relevant provincial house to serve in the National House.
- (8) A member of the National House may not serve more than two consecutive terms as a member of the National House.

### Disqualification for membership of National House

- 30.** A person is disqualified from becoming a member of the National House if that person—
- (a) is a member of a municipal council, a member of a provincial legislature or a member of Parliament; 5
  - (b) at the time of the election of members of the National House, is serving a sentence of imprisonment of more than 12 months without the option of a fine;
  - (c) is an unrehabilitated insolvent;
  - (d) is of unsound mind and has been so declared by a competent court;
  - (e) has been convicted of a criminal offence and sentenced to more than 12 months imprisonment without the option of a fine, either in the Republic or outside the Republic, if the conduct constituting the offence would have been an offence in the Republic, but no-one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined or until the time for an appeal has expired; 10 15
  - (f) is not a member of a provincial house;
  - (g) is not a South African citizen; or
  - (h) is not permanently resident within the Republic.

### Vacation of seats

- 31.** The seat of a member of the National House becomes vacant— 20
- (a) upon the death of a member;
  - (b) if the member resigns by written notice to the Minister;
  - (c) if the member becomes disqualified in terms of section 30;
  - (d) if the member becomes a full-time member of a municipal council, a member of a provincial legislature or a member of Parliament; 25
  - (e) if a member is convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
  - (f) if the member is removed from office for a breach of the code of conduct; or
  - (g) in the case of a member contemplated in section 28(1)(a)(i) and (b), if the member ceases to be a member of a provincial house that elected him or her, 30 and in the case of a member contemplated in section 28(1)(a)(ii) and (2), if the member ceases to be a chairperson or member of a traditional or Khoi-San council, as the case may be.

### Filling of vacancies

- 32.** (1) Where a vacancy occurs in the National House the Minister must, within 14 days after being informed of such a vacancy by the Secretary, inform the relevant Premier of such a vacancy. 35
- (2) A vacancy in the National House must, subject to sections 28 and 29, be filled within 45 days after it became vacant, by the election of a member for the unexpired portion of the term of office of the member in whose place he or she is elected, and in the same manner in which the previous member was elected or designated. 40

### Seat and meetings of National House

- 33.** (1) (a) The first meeting of the National House must take place within 90 days after its constitution in terms of sections 28 and 29, at a time and place determined by the Secretary, subject to subsection (5). 45
- (b) The President or a person designated by him or her may address the annual official opening of the National House.
- (2) Ordinary meetings of the National House may, subject to subsection (5), take place at a time and place determined by the Secretary in consultation with the Chairperson. 50
- (3) Special meetings of the National House may, subject to subsection (5), be held at a time and place determined by the Executive Committee of the National House or, if authorised thereto by the Executive Committee, by the Chairperson of the National House: Provided that the Minister may at any time summon the National House to a special meeting for the purposes of attending to urgent business at a time and place determined by the Minister. 55

(4) The National House must meet at least once in every quarter.

(5) The administrative seat of the National House is located at the same place where the head office of the Department is located and meetings of the National House may take place either at the administrative seat or at the seat of Parliament.

(6) The quorum for meetings of the National House is fifty per cent plus one of the total membership of the National House. 5

(7) The decisions of the National House must be taken by consensus, or where a vote is taken, subject to subsection (6), by a majority of the members present and voting in the meeting.

(8) Meetings of the National House are, subject to section 46(1)(f), open to the public. 10

### **Chairperson and deputy chairperson of National House**

**34.** (1) At its first meeting after it has been constituted in terms of sections 28 and 29, the National House must, with the Chief Justice or a judge designated by the Chief Justice presiding, elect one of its members to be the chairperson and must thereafter elect another of its members to be the deputy chairperson. 15

(2) The chairperson is vested with all powers and functions assigned to a chairperson in terms of this Act and the rules and orders of the National House.

(3) The chairperson presides over meetings of the National House.

(4) If the chairperson is absent or for any reason unable to exercise or perform the powers or functions vested in the office of the chairperson, or when the office of the chairperson is vacant, the deputy chairperson must act as chairperson during the chairperson's absence or inability or until a chairperson is elected. 20

(5) If both the chairperson and the deputy chairperson are absent, a member of the National House designated in terms of the rules and orders of the National House must act as chairperson while the said circumstances prevail. 25

(6) The deputy chairperson or the member designated in terms of this Act, while acting as a chairperson, may exercise the powers and must perform the functions vested in the office of the chairperson.

(7) While presiding at a meeting of the National House, a member of the House designated as a chairperson has a deliberative vote as well as a casting vote in the case of an equality of votes. 30

(8) The chairperson or deputy chairperson must vacate office if he or she becomes disqualified in terms of section 30.

(9) If the position of chairperson becomes vacant, the Minister or a person designated by the Minister must preside over the election of a member of the National House to fill the vacancy. 35

(10) If the position of deputy chairperson becomes vacant, the chairperson must preside over the election of a member of the National House to fill the vacancy.

(11) If the positions of both chairperson and deputy chairperson of the National House become vacant, the National House must, with the Chief Justice or a judge designated by the Chief Justice presiding, elect members of the National House to fill the vacancies. 40

(12) A chairperson or deputy chairperson is eligible for re-election: Provided that no member may serve as a chairperson or deputy chairperson of the National House for more than two terms.

### **Status of members of National House** 45

**35.** (1) The chairperson and deputy chairperson shall be full-time members of the National House.

(2) The Minister may, after consultation with the National House and subject to subsection (1), determine that certain members are full-time members of the National House. 50

### **Duties of National House**

**36.** (1) The duties of the National House are—

(a) to cooperate with the provincial houses, to promote—

(i) the role of traditional and Khoi-San leadership within a democratic constitutional dispensation; 55

(ii) nation building;

(iii) peace, stability and cohesiveness of communities;

- (iv) the preservation of the moral fiber and regeneration of society;
  - (v) the preservation of the culture and traditions of communities;
  - (vi) socio-economic development and service delivery;
  - (vii) the social well-being and welfare of communities; and
  - (viii) the transformation and adaptation of customary law and customs so as to comply with the provisions of the Bill of Rights in the Constitution, in particular by—
    - (aa) preventing unfair discrimination;
    - (bb) promoting equality; and
    - (cc) seeking to progressively advance gender representation in the succession to traditional and Khoi-San leadership positions; and
  - (b) to enhance co-operation between the National House and the various provincial houses with a view to address matters of common interest.
- (2) The National House—
- (a) must consider Parliamentary Bills referred to it by the Secretary to Parliament in terms of section 39; 15
  - (b) may advise the national government and make recommendations in respect of—
    - (i) matters relating to policy and legislation regarding traditional and Khoi-San leadership; 20
    - (ii) the role of traditional and Khoi-San leaders;
    - (iii) customary law; and
    - (iv) the customs of communities observing a system of customary law;
  - (c) may investigate and make available information on traditional and Khoi-San leadership, traditional and Khoi-San communities, customary law and customs; 25
  - (d) must, at the request of the Minister, advise any member of the National Cabinet in connection with any matter referred to in this section;
  - (e) must complement and support the work of government at national level;
  - (f) may form cooperative relations and partnerships with government at national level in respect of development and service delivery; 30
  - (g) may participate in and form partnerships in respect of international and national programmes geared towards the development of rural communities;
  - (h) may participate in national initiatives meant to monitor, review and evaluate government programmes in rural communities; and 35
  - (i) must perform tasks as may be determined by the President or Minister or as may be provided for in national legislation.
- (3) Any member of the National Cabinet who is responsible for national government development programmes that affect or may affect traditional or Khoi-San communities, must consult the National House before any such programme is implemented, amended or discontinued. 40

### **Administration of National House**

- 37.** (1) The Director-General of the Department may, in consultation with the chairperson of the National House and subject to the laws governing the public service, second or designate officials from the Department to discharge the administrative work of the National House. 45
- (2) The Director-General of the Department must, in terms of the laws governing the public service and in consultation with the chairperson of the National House, appoint a person as Secretary to the House, who must—
- (a) exercise or perform the powers and functions conferred upon or assigned to the Secretary by this Act and the rules and orders of the National House; 50
  - (b) subject to the directions of the National House, perform such work as is incidental to the exercise or performance by the National House of its powers and functions; and
  - (c) ensure that the National House and any committee of the House exercise or perform its duties, functions and responsibilities in an appropriate and cost-effective manner. 55
- (3) The Secretary must be supported in the exercise or performance of his or her powers and functions by officials of the Department seconded or designated in terms of subsection (1) for that purpose. 60

### Responsibilities of National House

- 38.** (1) The National House must—
- (a) prepare a strategic plan for a period of five years and review it annually;
  - (b) prepare an annual performance plan;
  - (c) keep proper records; 5
  - (d) in addition to quarterly meetings, hold an annual meeting with provincial houses to give account of the activities and finances of the National House;
  - (e) enforce the code of conduct;
  - (f) establish clear relationships with provincial houses and facilitate co-operation and communication between itself and provincial houses, as well as between the various provincial houses; 10
  - (g) assign clear responsibilities for the management and co-ordination of the administration of the National House to the Secretary of the National House and hold him or her accountable for the overall administration of the National House; 15
  - (h) maximise the efficiency of communication and decision-making within the administration of the National House;
  - (i) involve the Secretary of the National House in decisions impacting on the overall management of the National House, as far as is practical;
  - (j) promote an equitable, fair, open, non-discriminatory and supportive environment for all provincial houses; and 20
  - (k) provide an equitable, fair, open, non-discriminatory and supportive environment for members of the National House.
- (2) (a) The strategic plan and annual performance plan referred to in subsection (1)(a) and (b) must be submitted to the Minister for approval, before a date determined by the Minister. 25
- (b) The National House must submit a quarterly report to the Minister on the implementation of the strategic plan and annual performance plan.
- (c) The National House must, within 60 days after the Minister has approved the strategic plan or any revised strategic plan as contemplated in subsection (1)(a), table the strategic plan in Parliament. 30
- (3) The National House must, where applicable,—
- (a) determine the reasons why the one-third requirement for female representation on a provincial house is not met; and
  - (b) in collaboration with the relevant provincial house, determine the reasons why such requirement is not met by a local house, kingship or queenship council, principal traditional council, traditional council, traditional sub-council or Khoi-San council, 35
- and make recommendations to the Minister and the Premier, house and council concerned on how female representation on such house or council can be advanced to ensure that the one-third requirement is met. 40

### Referral of Bills to National House

- 39.** (1) (a) Any Parliamentary Bill—
- (i) which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or 45
  - (ii) pertaining to any matter referred to in section 154(2) of the Constitution, must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments. 50
- (b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comments: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly. 55
- (2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be.



### **Relationship between National House and kings, queens and principal traditional leaders**

- 40.** The National House may meet with recognised kings, queens and principal traditional leaders to discuss—
- (a) the activities and programmes of the National House; 5
  - (b) matters of interest to kings, queens and principal traditional leaders;
  - (c) matters relating to service delivery and the development of traditional communities; and
  - (d) any other business identified and proposed by either party and agreed to by both parties. 10

### **Relationship between National House and provincial houses**

- 41.** (1) The National House may—
- (a) investigate matters referred to it by a provincial house and make recommendations thereon;
  - (b) advise provincial houses regarding the administration of their affairs; and 15
  - (c) hold a meeting with a provincial house to discuss progress on matters relating to the general interest and welfare of traditional and Khoi-San communities.
- (2) Where the National House wishes to interact with a local house or a traditional or Khoi-San council, such interaction must be done in consultation with the relevant provincial house: Provided that where no provincial house has been established, the National House may, after having informed the relevant Premier, interact directly with a local house or traditional or Khoi-San council. 20
- (3) The chairperson of the National House must establish a body of chairpersons of provincial houses to interact with the National House on a regular basis on issues of mutual interest. 25
- (4) The Secretary of the National House must establish a body of Secretaries of provincial houses to interact with the National House on a regular basis on issues of mutual interest.

### **Support to National House**

- 42.** (1) The Department must provide support to the National House so as to enable the National House to perform all the functions assigned to it, and such support— 30
- (a) may include the provision of—
    - (i) infrastructure;
    - (ii) human resources as contemplated in section 37(1);
    - (iii) skills development programmes; and 35
    - (iv) administrative systems; and
  - (b) must include financial support, which support is subject to the budget allocation of the Department.
- (2) For the purposes of subsection (1)(b), the National House must submit to the Director-General of the Department, before a date determined by the Director-General, 40 annual estimates of expenditure for the next financial year.

### **Annual report of National House**

- 43.** (1) The National House must annually by no later than 30 June of a particular year, submit to the Minister a report in respect of the preceding financial year, complying with the provisions of subsection (2), in respect of its activities and programmes and must, within 30 days after the Minister has approved the report, table it in Parliament. 45
- (2) The information to be contained in the report contemplated in subsection (1), include but are not limited to, information on—
- (a) the composition of the National House;
  - (b) the filling of any vacancies; 50
  - (c) the disqualification of any member;
  - (d) meetings of the National House, with specific reference to the meetings held with kings, queens and principal traditional leaders, and the meetings held with provincial houses;
  - (e) the consideration of any Bills referred to the National House; 55

- (f) the exercising of any duties of the National House as contemplated in section 36;
  - (g) the responsibilities of the National House as contemplated in section 38;
  - (h) the budget and expenses of the National House;
  - (i) any matter as may be directed by the President or Minister; and 5
  - (j) any other matter deemed necessary by the National House.
- (3) (a) The Minister may, before approving a report submitted to him or her as contemplated in subsection (1), request a meeting with the National House to discuss the content of the report.
- (b) Any house of Parliament may, once a report contemplated in subsection (1) has been tabled in Parliament, request a meeting with the National House to discuss the contents of the report. 10

#### **Privileges and immunities of members of National House**

- 44.** (1) The National House has the authority to control, regulate and dispose of its internal affairs and has all such privileges and immunities as may, subject to the Constitution, be prescribed. 15
- (2) (a) Members of the National House have freedom of speech in the National House and its committees, subject to the rules and orders of the National House.
- (b) Members of the National House are not liable to civil or criminal proceedings, arrest, imprisonment or damages for— 20
- (i) anything that they have said in, produced before or submitted to the National House or any of its committees; or
  - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the National House or any of its committees.

#### **Remuneration and benefits of members of National House** 25

**45.** The remuneration and benefits of members of the National House are determined in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).

#### **Rules, orders and committees of National House**

- 46.** (1) The National House must make rules and orders in connection with the conduct of its business and proceedings, including rules and orders regulating— 30
- (a) subject to subsection (2), the establishment, constitution, meetings, powers and functions, procedures and lifespan of committees of the National House;
  - (b) the procedure to be followed in meetings of the National House;
  - (c) restrictions on access to such committees;
  - (d) the competency of any such committee to perform or dispose of its business and proceedings at venues other than the administrative seat of the National House; 35
  - (e) the designation of members to preside over meetings of the committees of the National House; and
  - (f) the attendance of any meeting of the National House by any person who is not a member of the House and the status of such a person at such a meeting. 40
- (2) There may be an executive committee consisting of the chairperson and deputy chairperson and those members contemplated in section 29(5).
- (3) The National House must, subject to subsection (1), establish an ethics committee.

#### **Dissolution of National House** 45

- 47.** (1) The National House must be dissolved—
- (a) on the expiry of the term of office of the National House; or
  - (b) after a vote supported by a majority of the full complement of the members of the National House in a meeting of the National House called for that purpose: Provided that in such instance the National House must be reconstituted in accordance with the provisions of sections 28 and 29, and such reconstituted National House shall function for the unexpired term of the dissolved National House as contemplated in section 27(2). 50
- (2) Notwithstanding the dissolution of the National House, the Minister may summon the National House to an extraordinary meeting to attend to any urgent business, during 55

the period following such dissolution until the day before the first meeting of the next National House and for this purpose—

- (a) every person who on the date of the dissolution of the National House is a member, remains a member of the House; and
- (b) the National House remains competent to function. 5

### **Oath or affirmation by members of National House**

48. The members of the National House must, before they begin to perform their functions in the National House, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before the Chief Justice or a judge designated by the Chief Justice. 10

## **Part 3**

### ***Provincial and local houses of traditional and Khoi-San leaders***

#### **Provincial houses of traditional and Khoi-San leaders**

49. (1) Provincial houses may be established by provinces in terms of provincial legislation and subject to the provisions of this Act. 15

(2) The provincial legislation contemplated in subsection (1) must include provisions that provide for—

- (a) fair representation of women in the provincial houses and at least one of the elected representatives of such provincial house to the National House to be a woman; 20
- (b) the term of provincial houses to be five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 63(13), the term of a provincial house that was established and constituted in terms of any applicable legislation prior to the commencement of this Act, will expire on 31 May 2022: Provided further that any term of office of provincial houses reconstituted or established after the commencement of this Act, shall expire every five years on 31 May, calculated from 31 May 2022; 25
- (c) where applicable, the membership of both senior traditional leaders and senior Khoi-San leaders in provincial houses;
- (d) where applicable, the election of both senior traditional leaders and senior Khoi-San leaders as contemplated in section 28(1)(a)(i) and (b); 30
- (e) where applicable, a relationship between the provincial house and any kingship or queenship council or principal traditional council within the particular province, including meetings with such councils or the respective recognised traditional leaders; 35
- (f) full-time and part-time members of the provincial house; and
- (g) administrative and financial support to the provincial house,

and may provide for a code of conduct for members of a provincial house that complements the code of conduct contained in Schedule 1 to this Act.

(3) (a) The membership contemplated in subsection (2)(c) must be composed in such a way that both senior traditional leaders and senior Khoi-San leaders are represented in the provincial house concerned— 40

- (i) in the same proportion that they are represented in the local houses concerned; or
- (ii) if local houses have not been established, in the same proportion that they would have been represented in such local houses had such houses been established: 45

Provided that if only one senior Khoi-San leader is a member of a local house as contemplated in subparagraph (i) or would have been such a member as contemplated in subparagraph (ii), such senior Khoi-San leader must be a member of the provincial house concerned.

(b) The fact that only senior traditional leaders or only senior Khoi-San leaders are recognised in a province does not preclude a province from establishing a provincial house. 50

(4) The members of a provincial house must, before they begin to perform their functions in the provincial house, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a judge of the High Court designated by the relevant Judge President for this purpose. 55

### Local houses of traditional and Khoi-San leaders

50. (1) Subject to the provisions of this Act and any regulations relating to local houses as contemplated in subsection (11), a Premier may by notice in the relevant Provincial *Gazette* establish a local house of traditional and Khoi-San leaders for the area of jurisdiction of a local municipality, district municipality or a metropolitan municipality where there are one or more traditional councils or Khoi-San councils. 5
- (2) A local house must consist of not less than five members, of which at least one member must be a senior traditional leader or a senior Khoi-San leader.
- (3) All senior traditional leaders and senior Khoi-San leaders who reside within the area of jurisdiction of a local municipality, district municipality or a metropolitan municipality are members of a local house established for the specific area. 10
- (4) Where within the area of a local municipality, district municipality or a metropolitan municipality there—
- (a) is only one traditional council or only one Khoi-San council, the local house consists of four members elected by that traditional council or Khoi-San council from amongst its members and the senior traditional leader or senior Khoi-San leader who is *ex officio* a member and chairperson of the local house; 15
- (b) are in total more than one but not more than five traditional councils, Khoi-San councils, traditional sub-councils or branches, the local house consists of— 20
- (i) all senior traditional leaders and senior Khoi-San leaders;
- (ii) all chairpersons of such traditional sub-councils; and
- (iii) all branch heads of such branches:
- Provided that where there is more than one— 25
- (aa) branch of the same Khoi-San community, the Khoi-San council must elect one branch head;
- (bb) traditional sub-council of the same traditional community, the traditional council must elect one chairperson,
- as a member of the local house: Provided further that where in total the senior traditional leaders, senior Khoi-San leaders, branch heads and chairpersons of traditional sub-councils are not more than five, the senior traditional leaders and senior Khoi-San leaders must designate the required number of members from amongst their councils: Provided further that where more than one senior traditional leader or senior Khoi-San leader is required to make a designation, such designation must be made with the concurrence of all relevant senior traditional leaders and senior Khoi-San leaders, as the case may be; 30
- (c) are in total more than five traditional councils, Khoi-San councils, traditional sub-councils or branches, the local house consists of— 35
- (i) all senior traditional leaders and senior Khoi-San leaders; 40
- (ii) all chairpersons of such traditional sub-councils; and
- (iii) all branch heads of such branches:
- Provided that where there is more than one—
- (aa) branch of the same Khoi-San community, the Khoi-San council must elect one branch head; 45
- (bb) traditional sub-council of the same traditional community, the traditional council must elect one chairperson,
- as a member of the local house.
- (5) Where the area of a traditional council is situated within more than one local municipality or within a local and district or local and metropolitan municipality— 50
- (a) the senior traditional leader is a member of the local house where he or she resides; and
- (b) the traditional council must elect a headman or headwoman from the areas situated in the local, district or metropolitan municipalities other than where the senior traditional leader resides, to be a member of the relevant local house. 55
- (6) The functions of a local house are—
- (a) to advise the local municipality, district municipality or the metropolitan municipality on—
- (i) matters pertaining to customary law, customs, traditional and Khoi-San leadership and the traditional and Khoi-San communities within such municipality; 60

- (ii) the development of planning frameworks that impact on traditional and Khoi-San communities; and
- (iii) the development of by-laws that impact on traditional and Khoi-San communities;
- (b) to participate in local programmes that have the development of traditional and Khoi-San communities as an object; and 5
- (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in traditional and Khoi-San communities. 5
- (7) A local house must meet at least four times a year. 10
- (8) The term of a local house is five years: Provided that, notwithstanding anything to the contrary contained in any law, but subject to section 63(14), the term of a local house that was established and constituted in terms of any applicable legislation prior to the commencement of this Act, will expire on 30 April 2022: Provided further that any term of office of local houses reconstituted or established after the commencement of this Act, shall expire every five years on 30 April, calculated from 30 April 2022. 15
- (9) The traditional and Khoi-San leaders who participate in the proceedings of a municipal council as contemplated in section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), must report on such participation in accordance with the provisions of that section. 20
- (10) A province must provide administrative and financial support to local houses which support may include, but is not limited to, office accommodation and support staff: Provided that where local houses are established for the areas of jurisdiction of local municipalities, the administrative support to such houses may be provided as a shared service on district or metropolitan level. 25
- (11) The Minister may, in accordance with the provisions of section 60, make regulations in respect of—
  - (a) the disqualification of members of a local house;
  - (b) the privileges and immunities of members of a local house;
  - (c) where applicable, the election of representatives to the relevant provincial house; 30
  - (d) meetings of a local house, including the quorum and requisite majorities;
  - (e) the vacation of seats and the filling of vacancies;
  - (f) subject to subsection (6), the powers, functions and duties of a local house;
  - (g) subject to subsection (4)(a), the chairperson and deputy chairperson of a local house; 35
  - (h) the rules and orders of a local house;
  - (i) subject to subsection (10), the administrative and financial support to be provided to a local house;
  - (j) the relationship between provincial and local houses having regard to the provisions of section 41; 40
  - (k) mechanisms or procedures that would allow a fair representation of women as members of local houses; and
  - (l) a code of conduct for members of local houses that complements the code of conduct contained in Schedule 1 to this Act. 45
- (12) A Premier may make regulations in respect of the matters set out in subsection (11): Provided that such regulations may not be inconsistent with any regulations made by the Minister in terms of subsection (11): Provided further that the provisions of section 60(2)(a) apply with the necessary changes to any regulations made by a Premier in terms of this subsection. 50
- (13) The members of a local house must, before they begin to perform their functions in the local house, take an oath or solemn affirmation as set out in Schedule 2 to this Act, before a judge of the High Court designated by the Judge President for this purpose.

## CHAPTER 4

### COMMISSION ON KHOI-SAN MATTERS

55

#### Establishment of Commission

- 51.** (1) There is hereby established a Commission on Khoi-San Matters.
- (2) The Commission must carry out its functions in a manner that is fair, objective and impartial.

### Appointment of members of Commission

52. (1) (a) The Minister must, subject to paragraphs (b), (c), (d), (e) and (f), and after inviting nominations from the general public, appoint a chairperson, deputy chairperson and not more than five other persons, as members of the Commission for a period not exceeding five years or any such further period as the Minister may determine by notice in the *Gazette*. 5

(b) A member of the Commission must be a South African citizen and have a qualification or experience in or knowledge appropriate to—

- (i) anthropology; 10
- (ii) history relating to the Khoi-San;
- (iii) customary law and customs and the institutions of Khoi-San leadership; or
- (iv) law.

(c) The members of the Commission referred to in paragraph (b)(i), (ii) and (iii) must collectively represent a pool of knowledge concerning issues relevant to the Khoi-San groupings. 15

(d) The Minister may appoint a selection panel consisting of the Director-General of the Department and not more than three other persons to make recommendations to the Minister on which nominees, based on the requirements referred to in this subsection, are most suited to serve on the Commission.

(e) The Minister may, after having received the recommendations of the selection panel contemplated in paragraph (d), refer the recommendations to the Premiers for comments. 20

(f) A nomination made by the public must contain all the information as may be specified in the invitation and must indicate whether the nominee is eligible for possible recognition as a senior Khoi-San leader or is a member of a community which may apply for possible recognition as a Khoi-San community: Provided that no such person may serve on the Commission. 25

(g) The names of the chairperson, deputy chairperson and members appointed in terms of paragraph (a), together with the date from which the appointment takes effect, must be published in the *Gazette*. 30

(2) A member of the Commission is either a full-time or part-time member, as determined by the Minister.

(3) If a member of the Commission dies or vacates office before the expiry of the term for which he or she has been appointed, the Minister may, in accordance with the provisions of subsection (1), appoint a person to fill the vacancy for the unexpired term for which such member was appointed. 35

(4) The Minister may remove a member of the Commission on the grounds of—

- (a) having been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine;
- (b) such member having been declared mentally unfit or mentally disordered by a court; 40
- (c) such member having been declared insolvent by a court;
- (d) misconduct, incapacity or incompetence; or
- (e) such member becoming eligible for recognition as a senior Khoi-San leader or branch head, or being a member of a community which applied for recognition as a Khoi-San community. 45

(5) (a) A decision to remove a member of the Commission on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigative committee appointed by the Minister.

(b) The Minister may suspend a member of the Commission who is under investigation in terms of paragraph (a). 50

### Vacancies

53. A vacancy occurs whenever a member of the Commission—

- (a) resigns by giving written notice to the Minister;
- (b) is removed in terms of section 52(4); or 55
- (c) becomes a member of the National Assembly, a member of a provincial legislature, a full-time member of a municipal council or a permanent delegate to the National Council of Provinces.

### Conditions of appointment of members of Commission

- 54.** (1) The Minister must, after consultation with the Minister of Finance, determine the conditions of appointment of the members of the Commission, taking into account—
- (a) the role, duties and responsibilities of the members of the Commission; and
  - (b) the level of expertise and experience required from the members of the Commission.
- (2) Conditions of appointment may differ in respect of—
- (a) the chairperson and other members of the Commission; and
  - (b) full-time and part-time members.

### Support to and reports by Commission 10

- 55.** (1) (a) The Department must provide administrative and financial support to the Commission so as to enable it to perform all the functions assigned to it and may second or designate officials from the Department for this purpose or to conduct research on behalf of the Commission.
- (b) The Commission may, subject to the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and with the approval of the Director-General of the Department, appoint a suitable person or persons to conduct research on its behalf.
- (2) The Commission must quarterly, or when requested by the Minister, provide the Minister with a comprehensive report on its activities. 20

### Application for recognition of Khoi-San communities, branches, senior Khoi-San leaders and branch heads

- 56.** (1) A community that meets the criteria set out in section 5 may lodge a detailed application in writing with the Commission for the recognition of that community and if applicable, the branches of that community as well as for the recognition of a senior Khoi-San leader who meets the criteria set out in section 7 and if applicable, a branch head. 25
- (2) An application contemplated in subsection (1) must be in the format as may be determined by the Commission, must comply with the provisions of section 5(1)(b) and must— 30
- (a) be lodged by a member of the community duly authorised by such community or the royal family concerned, as the case may be; and
  - (b) (i) be accompanied by information setting out the details on which the claim for the recognition of the community as well as the leadership positions are based; 35
    - (ii) be accompanied by details of the geographical area or areas referred to in section 5(1)(a) and, subject to section 5(1)(c), the number of members of the community occupying such areas;
    - (iii) be submitted within the period of two years referred to in section 57(2)(a); and 40
    - (iv) if the community referred to in subsection (1) has a proven history of hereditary or elected leadership, be accompanied by details of the hereditary or elected leadership position.
- (3) When considering an application, the Commission must consider and apply customary law and customs of the Khoi-San community concerned. 45
- (4) The Commission must, in respect of an application for the recognition of—
- (a) a community and branches, apply the criteria set out in section 5; and
  - (b) hereditary or elected senior Khoi-San leaders, apply the criteria set out in sections 7 and 10.
- (5) The Commission must, on a quarterly basis, inform the Premiers concerned of the applications received in terms of this section. 50

### Functions of Commission

- 57.** (1) The Commission must investigate and make recommendations to the Minister on the recognition of—
- (a) Khoi-San communities; 55
  - (b) hereditary senior Khoi-San leaders;

- (c) elected senior Khoi-San leaders; and
  - (d) branches and branch heads.
- (2) The Commission—
- (a) may only investigate and make recommendations in respect of those applications that have been lodged with the Commission in terms of section 56 within a period of two years from a date to be determined by the Minister by notice in the *Gazette*, or any such further period as the Minister may determine by notice in the *Gazette*; and 5
  - (b) must complete the investigations and make recommendations as contemplated in paragraph (a) within the period of five years referred to in section 52(1)(a), or any such further period as the Minister may determine. 10
- (3) Any application that has not been lodged with the Commission by the period referred to in subsection (2)(a), may not be dealt with by the Commission and must be dealt with in accordance with the provisions of sections 5 or 10, as the case may be.
- (4) Any dispute that may arise after the period referred to in subsection (2)(a), must be dealt with by the relevant Premier and for this purpose the provisions of section 59 apply with the necessary changes. 15

### Recommendations and decisions

- 58.** (1) A recommendation of the Commission must be agreed to by at least two-thirds of the members of the Commission. 20
- (2) (a) A recommendation of the Commission must, within a period of two weeks of the recommendation having been made, be referred for comments to the Premier of the province where the applicant community, leader and branch head reside or where the branch is located.
- (b) A Premier must submit his or her comments to the Commission within a period of 60 days from the date of referral of the recommendation: Provided that if no comments are received within the period of 60 days, it shall be deemed that the Premier is in support of the specific recommendation. 25
- (c) The Commission must, within a period of two weeks from the expiry of the 60 days referred to in paragraph (b), submit its recommendation together with the Premier's comments, if any, to the Minister. 30
- (3) The Minister must, within a period of 60 days from the date of receipt of the submission contemplated in subsection (2)(c), make a decision on the recommendation.
- (4) If the Minister takes a decision that differs with the recommendation submitted in terms of subsection (2), the Minister must provide written reasons for such decision to the Commission and relevant Premier. 35
- (5) Subject to the decision of the Minister as contemplated in subsection (3), the Minister must—
- (a) recognise a Khoi-San community, branch, senior Khoi-San leader or branch head, as the case may be, by notice in the *Gazette*; and 40
  - (b) issue a certificate of recognition to such leader.

## CHAPTER 5

### GENERAL PROVISIONS

#### Disputes

- 59.** (1) (a) This section applies to any traditional leadership dispute other than a dispute that was dealt with or is being dealt with by the CTLDC contemplated in section 63(23). 45
- (b) (i) Provincial legislation may provide for a mechanism to deal with traditional leadership disputes, excluding any dispute relating to a king or a queen or a kingship or a queenship: Provided that such legislation may not be inconsistent with this section. 50
- (ii) Notwithstanding the relevant provisions of provincial legislation contemplated in subparagraph (i), a Premier may apply subsection (3).
- (c) In the absence of provincial legislation as contemplated in paragraph (b)(i), a Premier must apply the provisions of this section.
- (2) Any traditional leadership dispute relating to a king, queen, principal traditional leader, senior traditional leader, headman, headwoman, kingship, queenship, principal traditional community, traditional community, headmanship or headwomanship, must 55



be dealt with by the President in the case of a king, queen, kingship or queenship and by the Premier concerned in the case of any other dispute and the President or Premier, as the case may be, must—

- (a) cause an investigation to be conducted by an investigative committee designated by him or her which committee must, in the case of a dispute concerning a king, queen, kingship or queenship include at least one member of the National House and in the case of any other dispute include at least one member of the relevant provincial house, to provide a report as well as recommendations on the matter in dispute within 60 days from the date of designation of the investigative committee; and
  - (b) refer the report to the relevant royal family or, where applicable, relevant traditional council for its written comments which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.
- (3) The President or the relevant Premier, as the case may be, may refer any dispute, including any report, recommendations and comments contemplated in subsection (2), to the Minister for written comments and advice which must be submitted to the President or Premier, as the case may be, within 60 days from the date of such referral.
- (4) After having considered the report and recommendations of the investigative committee, the comments of the royal family or traditional council and, where applicable, the comments and advice of the Minister, the President or relevant Premier, as the case may be, must take a decision on the matter in dispute and inform the parties to the dispute in writing of his or her decision.

### Regulations

60. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) any matter that must or may be prescribed in terms of this Act;
  - (b) the traditional, ceremonial and any other roles and functions of a king or queen, or principal traditional leader, after consultation with a delegation consisting of not more than two members of each kingship or queenship council or principal traditional council, as the case may be, designated by such councils;
  - (c) any matter that may be necessary to ensure the effective functioning of any local house, including a matter referred to in section 50(11); and
  - (d) any ancillary or administrative matter that is necessary to prescribe for the proper implementation or administration of this Act.
- (2) Before any regulations are made under this section, the Minister must—
- (a) in respect of regulations as contemplated in subsection (1)(a), (c) and (d), consult—
    - (i) the members of the Executive Councils responsible for traditional and Khoi-San leadership matters of the provinces concerned; and
    - (ii) the relevant provincial houses;
  - (b) in respect of regulations as contemplated in subsection (1)(b), consult—
    - (i) the Premiers concerned;
    - (ii) the members of the Executive Councils responsible for traditional and Khoi-San leadership matters of the provinces concerned;
    - (iii) the National House; and
    - (iv) the provincial houses concerned; and
  - (c) publish any draft regulations in the *Gazette* for public comment.
- (3) Any regulations made under this section must, within 90 days of the notice contemplated in subsection (1), be tabled in Parliament for noting.

### Delegation of powers and duties by Premier

61. (1) A Premier may, subject to such conditions as he or she may determine, in writing, delegate any power or duty conferred on him or her under this Act, except the power to recognise any community or leader or to withdraw such recognition, to the member of the Executive Council responsible for traditional affairs of the province concerned.
- (2) A delegation in terms of subsection (1) does not prevent the exercise of the relevant power or the performance of any duty by a Premier.

(3) A Premier may at any time, in writing, withdraw or amend a delegation contemplated in subsection (1).

(4) A member of the Executive Council to whom a power has been delegated, may not further delegate such power or duty, without the written authority of the Premier concerned.

(5) A Premier must, within 30 days of delegating any power or duty in terms of subsection (1) or withdrawing or amending such delegation in terms of subsection (3), inform the Minister accordingly.

### Monitoring

**62.** (1) The Department may monitor the implementation of this Act and any regulations made in terms of this Act, including the functioning of any Commission, committee, house, community, leader, council or branch provided for in this Act, and may submit reports in this regard and make recommendations on such implementation or functioning to the Minister, the relevant Premier or Premiers in general, and the relevant Commission, committee, house, community, leader, council or branch.

(2) The Department may monitor the implementation of section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and make recommendations on such implementation to the Minister, a Premier, any relevant house of traditional and Khoi-San leaders, and any senior traditional leader or senior Khoi-San leader who participates in the proceedings of a municipal council in accordance with the provisions of that Act.

(3) The Minister may, after having received a report or recommendations contemplated in subsections (1) and (2), as the case may be, and in consultation with the relevant Premier, take the necessary steps to ensure that the provisions of this Act are met.

### Transitional arrangements

**63.** (1) (a) Any traditional leader—

(i) who was appointed or recognised as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before 24 September 2004; or

(ii) who was recognised as such in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) (hereinafter referred to as the Framework Act), prior to the repeal of that Act, or in terms of any applicable provincial legislation which is not inconsistent with the Framework Act, as the case may be,

is deemed to have been recognised as such in terms of section 8 of this Act, subject to a recommendation of the CTLDC, where applicable.

(b) Any kingship or queenship, principal traditional community, traditional community and subject to paragraph (c), any headmanship or headwomanship that was recognised as such in terms of the Framework Act prior to the repeal of that Act, or in terms of any applicable provincial legislation which is not inconsistent with the Framework Act, as the case may be, is deemed to have been recognised in terms of section 3 of this Act, subject to a recommendation of the CTLDC, where applicable.

(c) (i) A Premier must, within three years of the commencement of this Act or such further period as the Minister may determine, cause an investigation to be conducted to determine whether any headmanship or headwomanship established or recognised in terms of applicable legislation prior to or since the commencement of the Framework Act, and any headman or headwoman appointed or recognised for such headmanship or headwomanship, meet the relevant criteria set out in sections 3, 7 and 8 of this Act.

(ii) If an investigation as contemplated in subparagraph (i) finds that any headmanship or headwomanship or any headman or headwoman does not meet the relevant criteria set out in sections 3, 7 and 8 of this Act, such headmanship or headwomanship shall automatically be disestablished upon the death or resignation of the relevant headman or headwoman and the appointment or recognition of the position of headman or headwoman, as the case may be, shall be deemed to have been withdrawn.

(iii) The Premier may by notice in the Provincial *Gazette* stipulate the legal, practical and other consequences of a disestablishment as contemplated in subparagraph (ii).

(d) Any kingship or queenship council, principal traditional council, traditional council or traditional sub-council established in terms of the Framework Act prior to the

repeal of that Act, or in terms of applicable provincial legislation which is not inconsistent with the Framework Act and which complies with all requirements of this Act, is deemed to have been established in terms of section 16 or 17 of this Act, as the case may be.

(2) Any person who was recognised or appointed as a regent, acting leader or deputy leader in terms of the Framework Act, prior to the repeal of that Act, or in terms of any applicable provincial legislation which is not inconsistent with the Framework Act, as the case may be, is deemed to have been recognised as such in terms of section 12, 13 or 14 of this Act, as the case may be.

(3) Any “tribe” that, immediately before 24 September 2004, had been established in terms of applicable legislation and was still recognised as such, is deemed to be a traditional community contemplated in section 3 of this Act, subject to—

(a) the withdrawal of its recognition in accordance with the provisions of section 4; or

(b) a recommendation of the CTLDC, where applicable.

(4) (a) A tribal authority that, immediately before 24 September 2004, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 16 of this Act and must perform the functions referred to in section 20: Provided that such a tribal authority must be reconstituted to comply with the provisions of section 16(2) within two years from the date of commencement of this Act.

(b) If, prior to the commencement of this Act, any tribal authority was reconstituted as contemplated in paragraph (a), but such reconstitution did not comply with all the requirements of section 16(2), such tribal authority is deemed to be a traditional council and must, within two years of the commencement of this Act, be reconstituted in full compliance with the provisions of section 16(2).

(c) If the timeframes contemplated in paragraph (a) or (b) are not met, the Minister may, within one year after the timeframes have lapsed and after consultation with the relevant Premier, apply the provisions of section 16(2) to ensure that such tribal authority or traditional council is constituted or reconstituted in accordance with the provisions of section 16(2).

(d) The provisions of section 16(5) apply to any constitution or reconstitution contemplated in this subsection.

(5) (a) Any community authority that had been established in terms of applicable legislation and still existed as such immediately before 24 September 2004, continues to exist until it is disestablished in accordance with provincial legislation, which disestablishment must take place within three years from the date of commencement of this Act, except where the traditional leadership related to that community authority is still under investigation by the CTLDC in which case the community authority concerned must be administered as if the relevant establishing legislation had not been repealed.

(b) The provincial legislation contemplated in paragraph (a) must regulate the legal, practical and other consequences of the disestablishment, including—

(i) the transfer of assets, liabilities and administrative and other records to an appropriate authority;

(ii) the vacation of office of any office bearer of such a community authority; and

(iii) the transfer of staff of such a community authority in accordance with applicable legislation.

(c) In the absence of provincial legislation as contemplated in paragraph (a), the Premier of a province may, after consultation with any relevant member of the Executive Council of the province, the relevant community authority and the provincial house, by notice in the Provincial *Gazette* disestablish such community authority and such notice must stipulate the legal, practical and other consequences of such disestablishment as contemplated in paragraph (b).

(d) If the timeframe referred to in paragraph (a) is not met in respect of any community authority, the Minister may, after consultation with the relevant Premier, disestablish a community authority and by notice in the *Gazette*, stipulate the legal, practical and other consequences of such disestablishment as contemplated in paragraph (b).

(6) (a) The Premier of a province must, by notice in the Provincial *Gazette*, within two years of the commencement of this Act disestablish any regional authority, Ibandla Lamakhosi, Council of Chiefs and ward authority functioning under tribal authorities that have been established in terms of applicable legislation before the commencement of this Act.

(b) The notice disestablishing a regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority must stipulate the legal, practical and other consequences of the disestablishment, including—

- (i) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, a municipality or local house of traditional leaders, as circumstances may require; 5
- (ii) the vacation of office of any office bearer of such a regional authority; and
- (iii) the transfer of staff of such a regional authority in accordance with applicable legislation.

(c) If the timeframe of two years referred to in paragraph (a) is not met in respect of any regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority, the Minister may, after consultation with the relevant Premier, disestablish a regional authority, Ibandla Lamakhosi, Council of Chiefs or ward authority and by notice in the *Gazette*, stipulate the legal, practical and other consequences of such disestablishment subject to paragraph (b). 10 15

(7) (a) Where, pursuant to an investigation conducted in terms of section 28(7) of the Framework Act, the Commission decided that a paramountcy qualifies to be recognised as a kingship or queenship, such a paramountcy is deemed to be recognised as a kingship or queenship in terms of section 3 of this Act.

(b) The incumbent paramount chiefs, in respect of the kingships and queenships contemplated in paragraph (a), are deemed to be recognised as kings or queens in terms of section 8 of this Act. 20

(c) In this subsection and subsection (8), “Commission” refers to the Commission on Traditional Leadership Disputes and Claims as it existed prior to 1 February 2010.

(8) (a) Where, pursuant to an investigation conducted in terms of section 28(7) of the Framework Act, the Commission decided that a paramountcy does not qualify to be recognised as a kingship or queenship, such a paramountcy will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a kingship or queenship in terms of section 3 of this Act. 25

(b) Where, pursuant to an investigation conducted in terms of section 28(7) of the Framework Act, the Commission has decided that a paramount chief does not qualify to be recognised as a king or queen, such a paramount chief, regent or acting paramount chief will, notwithstanding the decision of the Commission and subject to paragraph (c), be deemed to be recognised as a king or queen in terms of section 8 or a regent or acting king or queen in terms of section 12 or 13 of this Act, respectively. 30 35

(c) A kingship or queenship and a king or queen recognised in terms of paragraphs (a) and (b) lapses—

- (i) if, on 1 February 2010, the position was vacant;
- (ii) on the death of the incumbent king or queen where the position of such king or queen is occupied by a permanent incumbent; 40
- (iii) where the position of the incumbent king or queen is occupied by a regent or an acting incumbent, on the death of such regent or acting incumbent or on the date of the recognition of a successor,

whereafter the kingship or queenship and the king or queen, as the case may be, will be deemed to be a principal traditional community and principal traditional leader respectively: Provided that when a leader or a community becomes a principal traditional leader or principal traditional community in terms of this paragraph, the Premier concerned must publish a notice in the relevant Provincial *Gazette* recognising such principal traditional leader and principal traditional community, and issue a certificate of recognition to such principal traditional leader. 45 50

(9) If a kingship or queenship council has been established for a kingship or queenship referred to in subsection (8)(a) and the recognition of such kingship or queenship lapses in terms of subsection (8)(c), the kingship or queenship council shall be deemed to be a principal traditional council.

(10) (a) The CTLDC established by section 22 of the Framework Act shall, notwithstanding the repeal of that Act by this Act, continue to function in accordance with the provisions of sections 21 to 26A of the Framework Act until the expiry of its term of office, subject to section 25(4)(b) of the Framework Act. 55

(b) Any recommendation made by the CTLDC remains valid notwithstanding the repeal of the Framework Act. 60

(11) Any dispute or claim that has not been disposed of by the CTLDC by the expiry of its term of office must be dealt with in accordance with the provisions of section 59 of this Act or any relevant provisions provided for in provincial legislation.

(12) Notwithstanding the provisions of section 28, the traditional leaders who, on the date of commencement of this Act were members of the National House of Traditional Leaders established in terms of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009), remain members of that House and continue as such as if that Act had not been repealed, until 30 June 2022 whereupon that House must be reconstituted in terms of this Act: Provided that anything done by the National House in accordance with a provision of the National House of Traditional Leaders Act, 2009, prior to the commencement of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act. 5

(13) Notwithstanding the provisions of section 49, the traditional leaders who, on the date of commencement of this Act were members of a provincial house of traditional leaders established and constituted in terms of provincial legislation, remain members of the provincial house concerned, until 31 May 2022 and any subsequent reconstitution of such a house must comply with the provisions of section 49. 10

(14) Notwithstanding the provisions of section 50, the members of a local house of traditional leaders who, on the date of commencement of this Act were members of a local house established and constituted in terms of applicable national or provincial legislation, remain members of the local house concerned, until 30 April 2022 and any subsequent reconstitution of such a house must comply with the provisions of section 50. 15 20

(15) Any formula or guidelines determined or issued in terms of a provision of the Framework Act, prior to the commencement of this Act, continues to apply until it is replaced by a formula issued in terms of the applicable provision of this Act.

(16) Any consultations done in respect of the establishment of a kingship or queenship council as contemplated in section 3A(2)(a) of the Framework Act prior to the commencement of this Act, is deemed to have been done in accordance with the provisions of section 16(2) of this Act. 25

(17) Notwithstanding the provisions of sections 16 and 17, as the case may be, the members of a kingship or queenship council, a principal traditional council or a traditional sub-council who, on the date of commencement of this Act were members of such a council established and constituted in terms of applicable national or provincial legislation, remain members of the council concerned, until 30 April 2022, and any subsequent reconstitution of such a council must comply with the provisions of section 16 or 17, as the case may be. 30

(18) Notwithstanding the provisions of section 16, the members of a traditional council who, on the date of commencement of this Act were members of such a council established and constituted in terms of applicable national or provincial legislation, remain members of the council concerned, until 31 March 2022, and any subsequent reconstitution of such a council must comply with the provisions of section 16. 35

(19) Notwithstanding the provisions of section 18, the members of a Khoi-San council that was established in terms of this Act prior to 31 March 2022, remain members of the council concerned until 31 March 2027, and any subsequent reconstitution of such a council must comply with the provisions of section 18. 40

(20) (a) Notwithstanding any other provision of this Act, recognised senior Khoi-San leaders will become members of the National House, provincial houses and local houses with effect from the dates referred to in sections 27(2), 49(2)(b) and 50(8) respectively and subject to the provisions relating to the constitution of such houses as contemplated in sections 28, 29, 49 and 50. 45

(b) Notwithstanding the provisions of paragraph (a), any senior Khoi-San leader who has been recognised prior to the dates referred to in sections 49(2)(b) and 50(8) respectively, may, upon a decision of the relevant provincial or local house, become a co-opted member of such house with observer status for the term of office of such house ending in 2022. 50

(c) A recognised senior Khoi-San leader who becomes a co-opted member of a provincial or local house as contemplated in paragraph (b), may be reimbursed for his or her travel and accommodation expenditure for the purposes of attending meetings of such house, in accordance with the travel and subsistence policy of the provincial department responsible for providing administrative and financial support to such house. 55

(21) In any instance where the area of jurisdiction of a traditional council or traditional sub-council has been defined in terms of national or provincial legislation prior to the commencement of this Act, a Premier must, within three years of the commencement of this Act, or such further period as the Minister may determine, have 60

such areas of jurisdiction mapped and publish such maps by notice in the relevant Provincial *Gazette*.

(22) (a) Any partnership or agreement entered into by a kingship or queenship council, principal traditional council, traditional council or traditional sub-council prior to the commencement of this Act, must, within three years from such commencement, be reviewed by the relevant Premier to determine whether such partnership or agreement meets the requirements of section 24(3)(a), (b), (c), (e) and (4). 5

(b) If a Premier is of the opinion that a partnership or agreement contemplated in paragraph (a) does not meet such requirements, the Premier must refer such partnership or agreement to the parties who entered into such partnership or agreement and request them to either amend or re-enter into such partnership or agreement to ensure compliance with section 24(3)(a), (b), (c), (e) and (4), or to cancel such partnership or agreement. 10

(c) The provisions of section 24(6) apply to partnerships and agreements contemplated in this subsection. 15

(d) The provisions of this subsection do not apply to any partnership or agreement which, at the commencement of this Act, has been entered into in accordance with any enabling provisions of any other law.

(23) For the purposes of this chapter, “CTLDC” means the Commission on Traditional Leadership Disputes and Claims established in terms of section 22 of the Framework Act. 20

#### **Amendment of legislation**

64. The legislation mentioned in Schedule 3 to this Act, is hereby amended to the extent set out in that Schedule.

#### **Repeal of legislation and savings**

25

65. (1) The legislation specified in Schedule 4 to this Act, is repealed to the extent indicated in the third column of that Schedule.

(2) Anything done or deemed to have been done under any provision of a law repealed by subsection (1) and which may or must be done in terms of this Act, is regarded as having been done in terms of the corresponding provision of this Act. 30

#### **Short title and commencement**

66. This Act is called the Traditional and Khoi-San Leadership Act, 2018 and comes into operation on the date to be determined by the President by proclamation in the *Gazette*.

## SCHEDULE 1

### Code of conduct for members of houses and councils

- |     |  |    |
|-----|--|----|
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| 8.  | Rewards, gifts and favours   | 10 |
| 9.  | Unauthorised disclosure of information                                       |    |
| 10. | Breach of code by a member of the National House                             |    |
| 11. | Breach of code by a member of a provincial house, a local house or a council |    |

#### Definitions

- |    |  |    |
|----|--|----|
| 1. | In this Schedule, unless the context indicate otherwise—   | 15 |
|    | (a) <b>“House”</b> means the National House of Traditional and Khoi-San Leaders, a provincial house of traditional and Khoi-San leaders and a local house of traditional and Khoi-San Leaders; |    |
|    | (b) <b>“member”</b> means a member of a House or a council;  |    |
|    | (c) <b>“council”</b> means a kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council and a branch.                        | 20 |

#### General conduct of members

- |    |  |    |
|----|--|----|
| 2. | A member—  |    |
|    | (a) must perform his or her functions in good faith and in an honest, non-discriminatory and transparent manner;   | 25 |
|    | (b) must at all times act in the best interest of the House or council and in such a way that the credibility and integrity of the House or council are not compromised;                       |    |
|    | (c) may not deliberately do anything calculated to unjustly or unfairly injure the reputation of another member;   | 30 |
|    | (d) may not use the power of his or her office to seek or obtain special advantage for personal benefit that is not in the public interest; and  |    |
|    | (e) may not disclose confidential information acquired in the course of his or her duties, unless required by law to do so or by circumstances to prevent substantial injury to third persons. | 35 |

#### Attendance of meetings

- |    |   |    |
|----|---|----|
| 3. | A member must attend each meeting of the House or a council and of a committee of the House or a council of which he or she is a member, except when— |    |
|    | (a) leave of absence is granted in terms of an applicable law or as determined by the rules and orders of the House or council; or                    | 40 |
|    | (b) that member is required in terms of item 5(1)(b) to withdraw from a meeting.  |    |

#### Sanctions for non-attendance of meetings

- |    |   |    |
|----|---|----|
| 4. | (1) A member who, without leave of absence, is absent from three or more consecutive meetings of the House or a council which that member is required to attend, must be removed from office as a member of the House or such council.        | 45 |
|    | (2) The removal of a member from office in terms of sub-item (1) is subject to the provisions of item 10 in the case of a member of the National House and item 11 in the case of a member of a provincial house, a local house or a council. |    |

### Disclosure of interests

5. (1) A member must—
- (a) disclose to the House or a council, or to any committee of the House or a council of which he or she is a member, any direct or indirect personal or private business interest that that he or she, or any spouse, partner, business associate or close family member of that member, may have in any matter before the House or a council or before a committee of the House or a council; and
  - (b) withdraw from the proceedings of the House or a council or committee of the House or a council when a matter as contemplated in paragraph (a) is considered by the House, council or committee, unless the House or a council or a committee thereof decides that the member's direct or indirect interest in the matter is trivial or irrelevant.
- (2) A member who, or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the House or a council, must disclose full particulars of the benefit of which that member is aware of, at the first meeting of the House or a council at which it is possible for the member to make such disclosure.

### Personal gain

6. (1) A member may not use the position or privileges of being a member, or confidential information obtained as a member, for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the House or a council, a member may not—
- (a) be a party to or a beneficiary under a contract for the provision of goods or services to the House or a council;
  - (b) obtain a financial interest in any business of the House or a council; or
  - (c) for a fee or other consideration appear on behalf of any other person before the House or a council or a committee of the House or a council.
- (3) If more than one-quarter of the members of the House or a council object to consent being given to a member in terms of sub-item (2), such consent may only be given to the member with the approval of the Minister in the case of the National House and the relevant Premier in the case of a provincial house, a local house or a council.

### Declaration of interests

7. (1) When elected or appointed, a member must within 60 days of his or her election or appointment, declare in writing to an official of the House or of a council, designated by the Minister in the case of the National House or by the relevant Premier in the case of a provincial house, a local house or a council, the following financial interests held by such member:
- (a) Shares and securities in any company;
  - (b) membership of any close corporation;
  - (c) interest in any trust;
  - (d) directorships;
  - (e) partnerships;
  - (f) other financial interests in any business-undertaking;
  - (g) employment and remuneration;
  - (h) interest in property;
  - (i) pension; and
  - (j) subsidies, grants and sponsorships by any organisation.
- (2) Any change in the nature or detail of the financial interests of a member must annually be declared in writing to the official referred to in sub-item (1).
- (3) Gifts received by a member with a value above an amount as may be determined by the Minister by notice in the *Gazette*, must also be declared in accordance with sub-item (1).
- (4) The House or a council must determine which of the financial interests referred to in sub-item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.



### Rewards, gifts and favours

- 8.** A member may not request, solicit or accept any reward, gift or favour for—
- (a) voting or not voting in a particular manner on any matter before the House or a council or before a committee of the House or a council, of which he or she is a member; 5
  - (b) persuading the House or a council or any committee of the House or a council with regard to the exercise of any power, function or duty;
  - (c) making a representation to the House or a council or any committee of the House or a council; or
  - (d) disclosing privileged or confidential information. 10

### Unauthorised disclosure of information

- 9.** (1) A member may not without the permission of the House or a council or a committee of the House or a council, disclose any privileged or confidential information of the House or a council or such committee to any unauthorised person.
- (2) For the purposes of this item “privileged or confidential information” includes any information— 15
- (a) in respect of which the House or a council or a committee of the House or a council is the original author and is classified by the House or a council or a committee of the House or a council, to be privileged or confidential;
  - (b) discussed in closed session by the House or a council or a committee of the House or a council; 20
  - (c) of which the disclosure would violate a person’s right to privacy; or
  - (d) declared to be privileged, confidential or secret in terms of law.
- (3) This item does not derogate from the right of any person to apply for access to information in terms of relevant national legislation. 25

### Breach of code by a member of the National House

- 10.** (1) If the National House, on reasonable grounds, is of the opinion that a provision of the code of conduct has been breached by one of its members, the National House must—
- (a) authorise an investigation of the facts and circumstances of the alleged breach; 30
  - and
  - (b) give the member of the National House a reasonable opportunity to reply in writing regarding the alleged breach:
- Provided that the National House may suspend the relevant member for the duration of such an investigation. 35
- (2) The National House must inform the Minister of the outcome of any investigation.
- (3) The Secretary must ensure that each member of the National House, when taking office, is given a copy of this code of conduct and that a copy of the code is available in every room or place where the National House or a committee of the National House meets. 40
- (4) If the National House has authorised an investigation, it must establish an investigative committee—
- (a) to investigate and make a finding on any alleged breach of the code of conduct; and
  - (b) to make recommendations in respect of an appropriate sanction or sanctions to the National House. 45
- (5) If an investigative committee appointed by the National House to conduct an investigation finds that a member of the National House, including the chairperson or deputy chairperson, has breached a provision of the code of conduct, the National House may— 50
- (a) issue a formal warning to such member;
  - (b) reprimand such member;
  - (c) suspend such member for a period specified by the National House; or
  - (d) remove such member from office.
- (6) (a) Any member of the National House who has been warned, reprimanded, suspended or removed in terms of paragraph (a), (b), (c) or (d) of sub-item (5) may, within 14 days of having been notified of the decision of the National House, appeal to the Minister in writing setting out the reasons on which the appeal is based. 55

(b) A copy of the appeal must be provided to the National House.

(c) The National House may, within 14 days of receipt of the appeal referred to in paragraph (b), make any representation pertaining to the appeal to the Minister in writing.

(d) The Minister may, after having considered the appeal, confirm, set aside or vary the decision of the National House and inform the relevant member of the National House as well as the House of the outcome of the appeal. 5

(7) (a) If the National House does not authorise an investigation as contemplated in sub-item (1), the Minister must appoint a person or a committee to investigate any alleged breach of a provision of this code of conduct by a member of the National House and to make recommendations as to the appropriate sanction in terms of sub-item (5): Provided that the Minister may suspend the relevant member for the duration of such investigation. 10

(b) If the Minister is of the opinion that a member of the National House has breached a provision of this code of conduct, and that such contravention warrants a suspension or removal from office, the Minister may— 15

(i) suspend the member of the National House for a period and on conditions determined by the Minister; or

(ii) remove the member of the National House from office.

(8) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 20

### **Breach of code by a member of a provincial house, a local house or a council**

**11.** (1) If a provincial house, a local house or a council, or any member of such a house or council, on reasonable grounds, is of the opinion that a member of such house or council, excluding the chairperson, has breached a provision of this code of conduct, that house or council must establish an investigative committee— 25

(a) to investigate and make a finding on any alleged breach of this code of conduct; and

(b) to make recommendations to the relevant house or council:

Provided that the house or council may suspend the relevant member for the duration of such investigation. 30

(2) If an investigative committee finds that a member of a provincial house, a local house or a council has breached a provision of this code of conduct, the relevant house or council may—

(a) issue a formal warning to such member; 35

(b) reprimand such member;

(c) request the relevant Premier to suspend the member for a period determined by the Premier; or

(d) request the Premier to remove the member from office.

(3) (a) If the relevant provincial house, local house or council does not establish an investigative committee as contemplated in sub-item (1), the relevant Premier must appoint a person or an investigative committee to investigate any alleged breach of a provision of this code of conduct and to make recommendations as to the appropriate sanction in terms of sub-item (2): Provided that in the event of an alleged breach of the code of conduct by the chairperson of a provincial house, a local house or a council, the provisions of this item must be applied by the Premier: Provided further that the Premier may suspend the relevant member for the duration of such investigation. 40 45

(b) If a Premier is of the opinion that a member of a provincial house, a local house or a council has breached a provision of this code of conduct and that such contravention warrants a suspension or removal from office, the Premier may— 50

(i) issue a formal warning to such member;

(ii) reprimand such member;

(iii) suspend the member for a period and on conditions as he or she may determine; or

(iv) remove a member from office: Provided that in the case of the chairperson of a council, any such removal from office is subject to the relevant provision of the Act dealing with the withdrawal of recognition of the leadership position concerned. 55

(4) If a Premier fails to comply with sub-item (3)(a), the Minister must appoint a person or an investigative committee to conduct an investigation as contemplated in sub-item (3)(a), and the provisions of sub-item (3)(b) apply with the necessary changes. 60

(5) The Commissions Act, 1947 (Act No. 8 of 1947), or where appropriate, applicable provincial legislation, may be applied to an investigation in terms of sub-item (3).

(6) Any investigation in terms of this item must be conducted in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

**SCHEDULE 2**

***PART A***

***OATH BY MEMBERS OF THE NATIONAL HOUSE, PROVINCIAL HOUSES  
AND LOCAL HOUSES***

I, ..... (name of member), 5  
do swear that I will be faithful to the House and will obey, respect and uphold the  
Constitution and all other law of the Republic, and I solemnly promise to perform my  
functions as a member of the House to the best of my ability.

So help me God.

..... 10  
Signature of Member  
Date:

**PART B**

***AFFIRMATION BY MEMBERS OF THE NATIONAL HOUSE, PROVINCIAL HOUSES AND LOCAL HOUSES***

I, ..... (name of member),  
do solemnly affirm that I will be faithful to the House and will obey, respect and uphold 5  
the Constitution and all other law of the Republic, and I solemnly promise to perform  
my functions as a member of the House to the best of my ability.

.....  
Signature of Member  
Date:

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## SCHEDULE 3

## AMENDMENT OF LEGISLATION

## Section 64

**Amendment of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997**

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1. The Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), is hereby amended by the substitution in section 1 for paragraph (e) of the definition of ‘office-bearer’ with the following paragraph:

“(e) any [member of the National House of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader]

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(i) king, queen, principal traditional leader, senior traditional leader, senior Khoi-San leader, headman, headwoman and branch head recognised in accordance with the relevant provisions of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), prior to the repeal of that Act or as contemplated in section 28 of that Act, or recognised in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2018;

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(ii) member of the National House of Traditional and Khoi-San leaders, any provincial house of traditional and Khoi-San leaders and any local house of traditional and Khoi-San leaders established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2018 or in accordance with the provisions of any applicable provincial legislation; and

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(iii) non-traditional leader member of any kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council or branch established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2018 or as contemplated in section 63 of that Act: Provided that in respect of a non-traditional leader member recommendations may be made only in respect of allowances as referred to in section 8(4)(a) and (c);”.

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**Amendment of the Remuneration of Public Office Bearers Act, 1998**

2. The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), (hereinafter referred to as the Remuneration Act), is hereby amended by the substitution for the long title of the following long title:

“To provide for a framework for determining the salaries and allowances of the President, members of the National Assembly, permanent delegates to the National Council of Provinces, Deputy President, Ministers, Deputy Ministers, traditional leaders, Khoi-San leaders, non-traditional leader members of traditional councils, non-traditional leader members of kingship or queenship councils, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of local Houses of Traditional and Khoi-San Leaders, members of provincial Houses of Traditional and Khoi-San Leaders and members of the National House of Traditional and Khoi-San Leaders; to provide for a framework for determining the upper limit of salaries and allowances of Premiers, members of Executive Councils, members of provincial legislatures and members of Municipal Councils; to provide for a framework for determining pension and medical aid benefits of office bearers; to provide for the repeal of certain laws; and to provide for matters connected therewith.”.

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3. Section 1 of the Remuneration Act is hereby amended—

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(a) by the substitution for the definition of “benefits” of the following definition:

“ ‘benefits’ [means] in respect of a traditional leader, Khoi-San leader, non-traditional leader member [of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council; non-traditional members of kingship

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- or queenship councils, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders] and member of a house means those benefits which the President may determine in terms of section 5(3), and in respect of all other office bearers, the contributions contemplated in sections 8(2) and (5) and 9(2) and (5);”;
- (b) by the insertion after the definition of “**Executive Council**” of the following definitions:
- “**‘Khoi-San leader’** means a Khoi-San leader as defined in section 1 of the Traditional and Khoi-San Leadership Act, 2018;
- ‘member of a house’** means a member of the National House of Traditional and Khoi-San Leaders, a provincial house of traditional and Khoi-San leaders and a local house of traditional and Khoi-San leaders as established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2018 or any applicable provincial legislation;”;
- (c) by the insertion after the definition of “**Minister**” of the following definition:
- “**‘non-traditional leader member’** means a non-traditional leader member of any kingship or queenship council, principal traditional council, traditional council, traditional sub-council, Khoi-San council or branch established in accordance with the relevant provisions of the Traditional and Khoi-San Leadership Act, 2018;”;
- (d) by the substitution for the definition of “**office bearer**” of the following definition:
- “**‘office bearer’** means a Deputy President, a Minister, a Deputy Minister, a member of the National Assembly, a permanent delegate, a Premier, a member of an Executive Council, a member of a provincial legislature, a traditional leader, a Khoi-San leader, a non-traditional leader member [of a traditional council, a member of a kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders, a member of the National House of Traditional Leaders], a member of a house and a member of a Municipal Council;”;
- (e) by the substitution for the definition of “**traditional leader**” of the following definition:
- “**‘traditional leader’** means a traditional leader as defined in section 1 of the Traditional [Leadership and Governance Framework Act, 2003] and Khoi-San Leadership Act, 2018.”.

4. The following section is hereby substituted for section 5 of the Remuneration Act, 1998:

**“Salaries, allowances and benefits of traditional leaders, Khoi-San leaders, non-traditional leader members [of traditional councils, members of kingship or queenship councils, members of local Houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of National House of Traditional Leaders] and members of houses**

5. (1) Traditional leaders, Khoi-San leaders, non-traditional leader members [of any traditional council, non-traditional leader members of any kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of any local House of Traditional Leaders, members of any provincial house of Traditional Leaders and members of the National House of Traditional Leaders] and members of houses shall, despite anything to the contrary in any other law contained, be entitled to such salaries and allowances as may from time to time be determined by the President after consultation with the Premier concerned by proclamation in the *Gazette*, after taking into consideration—

- (a) any recommendations of the Commission;
- (b) the role, status, duties, functions and responsibilities of different categories of traditional leaders, Khoi-San leaders, non-traditional leader members [of traditional councils, non-traditional leader members of traditional

**sub-councils, non-traditional leader members of principal traditional councils; members of kingship or queenship councils, non-traditional members of kingship or queenship councils, different members of the local Houses of Traditional Leaders, different members of the Houses of Traditional Leaders in the various provinces and different members of the National House of Traditional Leaders] and different members of houses;** 5

- (c) the affordability of different levels of remuneration of public office bearers;
- (d) the current principles and levels of remuneration in society generally;
- (e) the need for the promotion of equality and uniformity of salaries and allowances for equal work performed; 10
- (f) the enhancement of co-operation, unity and understanding between traditional communities and Khoi-San communities nationally;
- (g) the extent of the role and functions of traditional leaders and Khoi-San leaders across provincial borders; and 15
- (h) inflationary increases.

(2) Despite the provisions of subsection (1), a traditional leader, a Khoi-San leader, a non-traditional leader member **[of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils, a member of a kingship or queenship council, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders or a member of the National House of Traditional Leaders]** and a member of a house who holds different public offices simultaneously, is only entitled to the salary, allowances and benefits of the public office for which he or she earns the highest income, but— 25

- (a) this subsection shall not preclude the payment of out of pocket expenses for the performance of functions other than those for which such office bearer receives such highest income; and
- (b) where only an allowance has been determined in terms of subsection (1) in respect of a traditional or Khoi-San leader's membership of a local House of Traditional and Khoi-San Leaders, a provincial house of Traditional and Khoi-San Leaders or the National House of Traditional and Khoi-San Leaders, such a traditional leader or Khoi-San leader shall be entitled to such an allowance in addition to his or her salary, allowances and benefits as a traditional leader or Khoi-San leader. 30 35

(3) (a) The President may, if he or she deems it expedient after consultation with the Minister and the Premier concerned, by proclamation in the *Gazette* determine any benefits to which a traditional leader, a Khoi-San leader, a non-traditional leader member **[of a traditional council, a member of a kingship or queenship council, non-traditional leader members of kingship or queenship councils, a member of any local House of Traditional Leaders, a member of any provincial house of Traditional Leaders or a member of the National House of Traditional Leaders]** or a member of a house shall be entitled, subject to such conditions as the President may prescribe. 40

(b) If the President decides to determine such benefits, the criteria listed in paragraphs (a) to (h) of subsection (1) shall be applicable, with the necessary changes. 45

(4) The amount payable in respect of salaries, allowances and benefits to traditional leaders, Khoi-San leaders, non-traditional leader members **[of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils, members of a kingship or queenship council, non-traditional leader members of kingship or queenship councils; members of local houses of Traditional Leaders, members of provincial houses of Traditional Leaders and members of the National House of Traditional Leaders]** and members of houses shall be paid from monies appropriated for that purpose by Parliament in respect of the National House of Traditional and Khoi-San Leaders and by a provincial legislature in respect of traditional leaders, Khoi-San leaders, non-traditional leader members **[of traditional councils, the members of kingship or queenship councils]**, members of local houses of Traditional and Khoi-San Leaders and members of provincial houses of Traditional and Khoi-San Leaders, as the case may be. 50 55 60

(5) . . .

(6) Despite the provisions of subsection (1), a member of the National House of Traditional and Khoi-San Leaders shall be entitled to an allowance as determined by the



President by proclamation in the *Gazette* for actual work performed with effect from 10 April 1997 until a determination is made in terms of subsection (1).”.

5. Section 8 of the Remuneration Act, 1998, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a Khoi-San leader, a non-traditional leader member **[of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils, a member of a kingship or queenship council, non-traditional leader members of kingship or queenship councils, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders]** or a member of a house.”.

6. Section 9 of the Remuneration Act, 1998, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, a Khoi-San leader, a non-traditional leader member **[of a traditional council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; a member of a kingship or queenship council, non-traditional leader members of kingship or queenship councils, a member of a local House of Traditional Leaders, a member of a provincial house of Traditional Leaders and a member of the National House of Traditional Leaders]** or a member of a house.”.

#### **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:

#### **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, 2018;
- (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.

(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
- (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. 5
- (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— 10
- (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 15
- (ii) the senior traditional leaders and senior Khoi-San leaders present at such meeting must, from amongst themselves— 20
- (aa) nominate one person in respect of each such municipality to participate in the proceedings of that municipality; and
- (bb) nominate one person in respect of each such municipality who will fill any vacancy of the position of participating leader which may occur: 25
- 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.
- (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. 30
- (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;
- (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; 50
- (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;
- (vi) is an unrehabilitated insolvent or has entered into a compromise with his or her creditors; 55
- (vii) is of unsound mind and has been so declared by a competent court;
- (viii) is an elected councillor of a municipal council;
- (ix) is a member of a provincial legislature;
- (x) is a member of the National Assembly; 60
- (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; 5
  - (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; 10
  - (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; 15
  - (f) participate in the development of policy and by-laws at a municipal level;
  - (g) participate in relevant development programmes of the municipality; 20
  - (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; 25
  - (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, 30
- 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; 35
  - (b) recognise and respect the local sphere of government as a distinctive, interdependent and interrelated sphere of government as contemplated in the Constitution; and 40
  - (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. 45

- (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; 50
  - (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, 55
- 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. 60

(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; 5
- (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). 10

(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— 15

- (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 20
- (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. 25

(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. 30 35

(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). 40

(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.”. 45

(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, 2018. 50

**SCHEDULE 4****REPEAL OF LEGISLATION***(Section 65)*

<b>No</b>	<b>Title, number and year of law</b>	<b>Extent of repeal</b>	
1	Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003)	The whole	5
2	Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009)	The whole	
3	National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009)	The whole	10

## **MEMORANDUM ON THE OBJECTS OF THE TRADITIONAL AND KHOI-SAN LEADERSHIP BILL, 2015**

### **1. BACKGROUND AND OBJECTS OF BILL**

- 1.1 Section 211 of the Constitution of the Republic of South Africa, 1996, makes provision for the recognition of the institution, status and role of traditional leadership according to customary law. It is further determined that a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs. Section 212 of the Constitution determines that national legislation may provide for a role for traditional leadership as an institution at local level, while matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities may be dealt with through national or provincial legislation that makes provision for the establishment of houses of traditional leaders. This resulted in the promulgation of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003)(Framework Act), and the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009)(National House Act).
- 1.2 While certain traditional structures and leadership positions have therefore been recognised by law in compliance with the Constitutional prescripts, there has never before been statutory recognition of the Khoi-San. The formal recognition of the Khoi-San communities, leaders and structures is only possible through enabling legislation.
- 1.3 Subsequently, it was decided to prepare a single Bill—
- to make provision for the recognition of the Khoi-San;
  - to repeal and replace the Framework Act and the National House Act—
    - to ensure an integrated approach in dealing with all matters relating to traditional affairs;
    - to enhance the uniform manner in which matters relating to traditional affairs are dealt with across the country; and
    - to address legal uncertainties and gaps that have been identified in the two pieces of legislation; and
  - to amend the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), and the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), appropriately.
- 1.4 The principles on which the two existing pieces of legislation are based have been retained in the Bill. The majority of provisions of the said legislation have therefore been included in the Bill albeit in certain instances in an amended format.
- 1.5 Three of the key objectives of the Bill are—
- to transform the traditional and Khoi-San institutions in line with constitutional imperatives such as the Bill of Rights;
  - to restore the integrity and legitimacy of the institutions of traditional and Khoi-San leadership in line with customary law and practices; and
  - to protect and promote the institutions of traditional and Khoi-San leadership.

- 1.6 The Bill is based on specific principles in terms of which it is important that the institutions of traditional and Khoi-San leadership—
- promote democratic governance and the values of an open and democratic society;
  - advance gender equality within the institutions of traditional and Khoi-San leadership;
  - promote freedom, human dignity and the achievement of equality and non-sexism;
  - derive their mandate and primary authority from applicable customary law and customs;
  - strive to enhance tradition and culture;
  - promote nation building and harmony and peace amongst people; and
  - promote the principles of co-operative governance in their interaction with all spheres of government and organs of state.

## 2. ANALYSIS OF BILL

- 2.1 Clause 1 of the Bill contains the definitions of certain terms and phrases used in the Bill. The definitions of “principal traditional community” and “principal traditional leader” seek to address any uncertainty in respect of who exactly are or can become principal traditional leaders. The two definitions make it clear that it is not a category of traditional leadership for which anyone can apply, but that it relates only to persons who by operation of law become principal traditional leaders.
- 2.2 Clause 2 of the Bill confirms that traditional and Khoi-San communities must promote Constitutional principles and may not use any official resources to the benefit of political parties.
- 2.3 Clause 3 of the Bill deals with the recognition of kingships or queenships, traditional communities and headmanship or headwomenship, while clause 4 deals with the withdrawal of such recognition.
- (a) A number of traditional communities which are recognised as such and are grouped together may be recognised as a kingship or queenship if they meet certain criteria. Such communities must have recognised traditional councils, senior traditional leaders and they must recognise a king or a queen in terms of customary law and customs. They must also have a system of traditional leadership at a kingship or queenship level. An application for the recognition of a kingship or queenship must be submitted to the President who may recognise such kingship or queenship after consultation with the Minister responsible for traditional and Khoi-San matters. The President may have an investigation conducted to determine whether the relevant traditional communities comply with the criteria for recognition as a kingship or queenship and may also direct the Minister to conduct certain consultations in this regard. The provisions of this clause are more consultative and inclusive in nature than those in existing legislation. This will ensure that the President makes an informed decision and is not dependent only on the recommendation of the Minister as is currently the case.
- (b) In terms of clause 4 of the Bill the President may withdraw the recognition of a kingship or queenship. This may be considered where the majority of traditional communities under the jurisdiction of a kingship or queenship request the President to withdraw such recognition. Such a request must be accompanied by the grounds on which it is based. Clause 4 also contains provisions relating to investigations and consultations in respect of requests for the withdrawal of the recognition



of a kingship or queenship, similar to those provided for in respect of the recognition of a kingship or queenship.

- (c) In the case of the recognition of a community as a traditional community, the community must have a system of traditional leadership at a senior traditional leadership level and may have a number of headmanship or headwomanship. The community must also occupy a specific geographical area. The recognition is done by the relevant Premier after consultation with the relevant provincial house.
- (d) In terms of clause 4 a Premier may consider the withdrawal of the recognition of a traditional community on request of such a community, on request of the relevant kingship or queenship or principal traditional council, or where two or more recognised communities request the Premier to merge them into a single traditional community.
- (e) A headmanship or headwomanship may be recognised as such if it, amongst others, has a system of traditional leadership at a headmanship or headwomanship level and if it will contribute to the more effective and efficient administration of the relevant traditional council. This is a new provision as current legislation does not make provision for the recognition of a headmanship or headwomanship. The Bill, through clause 3, addresses this oversight and provides for the recognition criteria of a headmanship or headwomanship. A portion of a traditional community that is of the view that it meets the criteria for recognition as a headmanship or headwomanship may request the relevant traditional council to apply to the Premier concerned for such recognition.
- (f) In terms of clause 4 the withdrawal of the recognition of a headmanship or headwomanship may only be considered where the relevant traditional council requests the Premier concerned to withdraw such recognition. The Bill makes provision for the Premier to cause an investigation to be conducted in order to establish whether there is sufficient cause for the withdrawal of the recognition of a headmanship or headwomanship.
- (g) It should be noted that all the provisions in the Bill relating to the recognition of communities and leadership positions or the withdrawal of such recognitions, seek to ensure that the relevant criteria are as far as possible aligned in respect of the different communities or leadership positions. The various provisions in respect of investigations and specific types of consultations furthermore seek to ensure that informed decisions are taken.

- 2.4 As mentioned under paragraph 2.1, the definitions of “principal traditional community” and “principal traditional leader” in clause 1 of the Bill provide clarity on which communities and leaders are or are to become principal traditional communities or leaders. It is therefore also important that the Bill makes provision for the withdrawal of the recognition of a principal traditional community. Clause 4 of the Bill contains the relevant provisions. The withdrawal of the recognition of a principal traditional community may be considered by the relevant Premier where the majority of traditional communities under the jurisdiction of the principal traditional community request such a withdrawal and provide the Premier with the grounds on which the request is based. Provision is also made for an investigation and consultations.
- 2.5 Clause 5 of the Bill makes provision for the recognition of Khoi-San communities and branches (please also see clauses 56 and 58 of the Bill). As mentioned earlier, this is the first time that statutory provision is made for the Khoi-San and therefore this provision and others in the Bill relating to the Khoi-San are all new. A community may apply to the relevant Premier to be recognised as a Khoi-San community if it meets certain criteria. The community must have a history of self-identification by members of the community as belonging to a unique community distinct from all other communities. It must observe distinctive established Khoi-San customary law and customs and has to be subject to a system of hereditary or elected Khoi-San leadership. Furthermore, the community must have existing

distinctive cultural heritage manifestations and a proven history of existence of the community from a particular point in time up to the present. The relevant community must also occupy a specific geographical area or various geographical areas together with other non-community members. These criteria differ slightly from the criteria for traditional communities mainly due to the unique circumstances and history of the Khoi-San. However, the criteria are necessary to ensure that only legitimate Khoi-San communities in terms of customary law and customs are considered for recognition.

- 2.6 A Premier may have an investigation conducted to determine whether a community does indeed comply with the criteria for recognition and must also consult the relevant provincial house. Furthermore, since the members of Khoi-San communities may be residing in various geographical areas, an application for recognition of such community must be accompanied by a list of the community members.
- 2.7 It is also important to note that all initial applications for the recognition of Khoi-San communities must be referred to the Commission on Khoi-San Matters to be established under clause 51 of the Bill. These initial applications will be dealt with in accordance with the provisions of clauses 56 and 58.
- 2.8 The Bill also makes provision for the recognition of Khoi-San branches. Certain Khoi-San communities do not occupy a single definable geographical area but a number of geographical areas that may be situated in more than one province. These communities have a “main community” where the leader of that community resides and one or more smaller communities that recognise such leader but which are situated in other geographical areas. These smaller communities are known as branches and provision is made for their recognition. A branch must comply with certain criteria, one of which is that it should consist of at least 10% of the total number of community members.
- 2.9 In cases where a branch is situated in a province other than the province where the Khoi-San council is situated, the Premier of the province where the council is situated has to request the Premier of the province where the branch is situated to recognise that branch. Clause 6 of the Bill makes provision for the withdrawal of the recognition of a Khoi-San community or branch where the council requests such a withdrawal or where the Khoi-San councils of two or more communities request the Premier to merge such communities into a single Khoi-San community.
- 2.10 The following traditional leadership positions are provided for in clause 7(1) of the Bill: king or queen, principal traditional leader, senior traditional leader, headman or headwoman. This clause also makes provision for the following Khoi-San leadership positions: senior Khoi-San leader and branch head. Clause 7(2) contains the generic criteria that apply in respect of all leadership positions. An application for the recognition of the position of a king or a queen must be submitted to the President, while applications for the recognition of all other leadership positions must be submitted to the relevant Premier. Provision is also made for investigations to be conducted in cases where there is evidence or allegations that a leadership position does not comply with the criteria contained in clause 7(2).
- 2.11 Clause 7(7) furthermore deals with instances where a senior traditional leader is recognised as a king or a queen, while clause 7(8) makes provision for a recognised traditional leader to resign and the consequences of such resignation. Clause 7(9) states that it will be an offence for any person to pretend to be a recognised traditional or Khoi-San leader if it is not the case.
- 2.12 Clause 8 of the Bill makes provision for the recognition of kings or queens, principal traditional leaders, senior traditional leaders and headmen or headwomen. Clause 9 makes provision for the withdrawal of such recognition (the term “withdrawal” replaces the term “removal” which is used in the Framework Act).

- (a) When the position of a king or queen has to be filled, the royal family must identify a person who qualifies in terms of customary law to assume the position of a king or a queen and then apply to the President for the recognition of the person so identified as a king or a queen. The application must be accompanied by the particulars of the identified person and the reasons for the identification. The President may recognise the person as a king or a queen after consultation with the Minister and the relevant Premier. If there is an allegation that the identification of the person was not done in terms of customary law and customs, the President may cause an investigation to be conducted by an investigative committee which must include at least one member of the National House of Traditional and Khoi-San Leaders (hereinafter referred to as the National House) in order to establish whether the identification was done in accordance with customary law and customs or not. If the investigative committee's report indicates that the identification was not done in accordance with customary law and customs, such report must be referred to the royal family for its comments.
- (b) In terms of clause 9 of the Bill the recognition of a king or a queen must be withdrawn by the President if the person has been convicted of an offence with a sentence of imprisonment for more than 12 months without the option of a fine, if the person suffers from a physical incapacity or mental infirmity which makes it impossible for him or her to function as a king or queen and if the person no longer permanently resides within the area of the kingship or queenship council. The recognition may also be withdrawn if the person has been removed from office in terms of the code of conduct or has transgressed customary law or customs on a ground that warrants such withdrawal. The royal family may recommend the withdrawal of the recognition of a king or a queen and must provide reasons to the President. However, if there is evidence or an allegation that the recommendation of the royal family is not based on the grounds provided for in clause 9, the President may cause an investigation to be conducted by an investigative committee which again must include at least one member of the National House. The final decision is therefore vested in the President and not in the royal family. Where the recognition of a king or queen is withdrawn, a successor may be identified in accordance with the provisions of clause 8.
- (c) In the case of the recognition of a successor to the position of principal traditional leader the process to be followed is the same as the process for the recognition of a king or a queen as discussed under paragraph (a) above. The only difference is that the relevant authority is not the President but the Premier of the province concerned, while in the case of investigations the Premier must include a member of the provincial house of traditional and Khoi-San leaders on the investigative committee. Also take note of clause 63(8)(c) of the Bill.
- (d) Clause 9 of the Bill makes provision for the withdrawal of the recognition of principal traditional leaders based on the same grounds and process as discussed under paragraph (b) above.
- (e) In terms of clause 8 of the Bill, a royal family must, in the case of hereditary succession, identify a person who qualifies in terms of customary law or customs to assume the position of a senior traditional leader, headman or headwoman. If hereditary succession is not applicable, the person to assume the position of a headman or headwoman must be identified or elected by the relevant community. The royal family, in the case of hereditary succession, or the traditional council, in the case of an identified or elected headman or headwoman, must apply to the Premier concerned for the recognition of such person. If there is evidence or an allegation that the identification or election of the relevant person was not done in terms of customary law and customs, the Premier may have an investigation conducted by an investigative committee. At least one member of the relevant provincial house must be part of such an investigative committee. Where necessary, the report of the investigative

committee must be referred to the relevant royal family or traditional council for its comments.

- (f) Clause 9 makes provision for the withdrawal of the recognition of a senior traditional leader, headman or headwoman on the same grounds as those mentioned earlier in respect of other leadership positions.

2.13 The recognition of senior Khoi-San leaders and branch heads is dealt with by clause 10 of the Bill. When such positions are to be filled the royal family, in the case of hereditary succession, must identify a senior Khoi-San leader as the hereditary successor, with due regard to applicable customary law and customs. In the case of succession by election, the relevant Khoi-San council must elect a senior Khoi-San leader or branch head to assume the position in question. Elections must be conducted in terms of rules and procedures adopted by the Khoi-San council concerned. The royal family or Khoi-San council, as the case may be, must apply to the Premier concerned for the recognition of the person so identified or elected. The Premier must recognise the person by notice in the Provincial *Gazette* and must issue a certificate of recognition to such person. If there is evidence or an allegation that the identification or election of a person was not done in accordance with such rules and procedures or such customary law or customs, the Premier may cause an investigation to be conducted by an investigative committee. At least one Khoi-San member of the relevant provincial house must be part of such an investigative committee. Where necessary, the committee's report must be referred to the royal family or Khoi-San council, as the case may be, for comments.

2.14 The provisions relating to the withdrawal of the recognition of a Khoi-San leader or branch head, as contained in clause 11 of the Bill, are in line with similar provisions in respect of the withdrawal of the recognition of other leadership positions as already discussed. Where such a withdrawal has been done, a successor must be identified or elected, as the case may be, in accordance with the provisions of clause 10.

2.15 In cases where the hereditary successor to the position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader is a minor, a regent may be identified by the royal family to assume leadership on behalf of the minor. This is provided for in clause 12 of the Bill. If the relevant royal family fails to identify a regent, the Premier concerned may do so after consultation with the royal family. Provision is made for the position of a regent to be reviewed at least every two years. Provision is also made for investigations in instances where there is evidence or an allegation that the identification of a regent was not done in accordance with customary law or customs. As soon as the successor to the relevant position ceases to be a minor, the regent must relinquish the position and the rightful successor must be recognised appropriately. The circumstances for the recognition of a regent are therefore uniform and apply to all hereditary traditional and Khoi-San leaders.

2.16 Clause 13 of the Bill makes provision for acting traditional and Khoi-San leaders. This is necessary where a successor to the hereditary position of a king, queen, principal traditional leader, senior traditional leader, headman, headwoman or senior Khoi-San leader has not yet been identified by the royal family or a person has not yet been elected to the position of senior Khoi-San leader or branch head. It is also necessary in cases where the identification of a successor is subject to an investigation or where the particular leader will be absent from his or her area of jurisdiction for more than three months for the treatment of an illness, study purposes or any other lawful purpose.

2.17 In terms of clause 14 of the Bill, a senior traditional leader, headman or headwoman who occupies a hereditary position, may with the concurrence of the royal family, identify a deputy to act in his or her stead whenever the particular leader becomes a full-time member of a municipal council, is elected as a member of the National Assembly or a provincial legislature, is

appointed as a permanent delegate of the National Council of Provinces, is elected or appointed in a full-time position in any house of traditional and Khoi-San leaders, or is employed on a full-time basis. The same principles apply in respect of hereditary senior Khoi-San leaders. The recognition of any such deputy traditional or Khoi-San leader is to be done by the relevant Premier who must issue a certificate of recognition to such deputy.

- 2.18 Clause 15 of the Bill determines that a traditional or Khoi-San leader may perform the functions provided for in terms of customary law and customs or relevant national or provincial legislation.
- 2.19 Once a kingship or queenship, principal traditional community or traditional community has been recognised, such community must establish an appropriate council.
- (a) In the case of the recognition of a kingship or queenship by the President, that kingship or queenship must within two years of such recognition establish a kingship or queenship council. This provision is contained in clause 16 of the Bill. A kingship or queenship council consists of the number of members determined by the Minister by formula published in the Government *Gazette*, after consultation with the king or queen, a forum of not more than five members of the royal family and a forum of not more than 20 senior traditional leaders under the kingship or queenship. It is therefore a very inclusive consultation process. At least a third of the members of such council must be women, although the Minister may determine a lower threshold if this requirement cannot be met. The membership of a kingship or queenship council comprises 60% of traditional leaders including the king or queen who is an *ex officio* member and chairperson of the council. These traditional leaders must be members of the traditional community and must be selected by the king or queen in terms of that community's customs. The king or queen must do so with the concurrence of a forum of not more than five members of the royal family (the same forum as referred to earlier). The decision is therefore not left to the sole discretion of the king or queen, but involves the royal family. The other 40% members are to be elected. For this purpose each traditional council falling within the area of jurisdiction of the kingship or queenship must elect one person from the elected members of such council. Should the number of persons so elected be more than the required number, the persons so elected must elect from amongst themselves the number of persons needed. The term of office of a kingship or queenship council must be aligned with that of the National House. Clause 16 also determines under which circumstances a member of a kingship or queenship council must vacate his or her office, which includes removal from office in terms of the code of conduct provided for in the Bill.
  - (b) As far as the establishment of a principal traditional council is concerned, the same principles apply as discussed under paragraph (a) above. In this case, the Minister must consult the principal traditional leader and a forum of not more than five members of the royal family and a forum of not more than 20 senior traditional leaders under the principal traditional community, before publishing the formula for the composition of a principal traditional council.
  - (c) Clause 16 of the Bill also deals with the establishment of traditional councils. Once a traditional community has been recognised, such community must within two years of such recognition establish a traditional council. To ensure uniformity in the composition of these councils, the number of members is to be determined by the Minister by formula published in the Government *Gazette*. Traditional councils must comprise of 60% traditional leaders and members of the traditional community selected by the senior traditional leader concerned with the concurrence of a forum of not more than five members of the royal family, as well as 40% members elected by the traditional community. The principles on which these provisions are based are therefore also in line with those applicable to other councils as discussed above and seek

to ensure that the selection is not left to the discretion of a single person, but that a more inclusive process is followed.

- (d) Clause 16 determines that when the recognition of a kingship or queenship, principal traditional community or traditional community is withdrawn in terms of clause 4, such withdrawal will automatically result in the disestablishment of the councils referred to above as well as the withdrawal of recognition of the particular leader. Please also see the comments regarding the alignment of terms under paragraph 2.30 hereunder.

2.20 Where a traditional community occupies two or more non-contiguous geographical areas within a province, the traditional council may, in terms of clause 17 of the Bill, request the Premier to establish a traditional sub-council for the area which is located outside the area where the seat of the traditional community is located. One of the considerations to be taken into account is whether the establishment of such a sub-council will improve the effective administration of the traditional community. A sub-council consists of the number of members as determined by the Premier after consultation with the main traditional council. A Premier may withdraw the recognition of a traditional sub-council if it no longer contributes to the effective administration of the traditional community.

2.21 Clause 18 of the Bill makes provision for the establishment of Khoi-San councils. A Khoi-San community must within two years of being recognised establish a Khoi-San council. A Khoi-San council shall consist of the number of members determined by the Minister by formula published in the Government *Gazette*. The composition of a Khoi-San council is based on the same principles as traditional councils. However, in respect of the 60% component of the Khoi-San council, branch heads may also be part of the council if there are branch heads. If there are no branches, the senior Khoi-San leader must select the number of members from the members of the main community and also, where applicable, from the members of the royal family. This must be done with the concurrence of a forum of not less than five and not more than ten members designated by the royal family.

2.22 Clause 19 of the Bill makes provision for the functions of kingship or queenship councils and principal traditional councils. These councils have to administer the affairs of the kingship or queenship or principal traditional community and guide the relevant traditional leaders in the performance of their functions. They furthermore have to assist the king or queen or principal traditional leader in the performance of their customary functions in relation to the recognition of senior traditional leaders and in mediating disputes between senior traditional leaders. The councils also have to promote unity between traditional communities. The councils must keep proper records and their financial statements must be audited. The councils (and thus the members) must adhere to the code of conduct provided for in this Bill.

2.23 The functions of traditional councils, traditional sub-councils, Khoi-San councils and branches, as contained in clause 20 of the Bill, are similar to those contained in clause 19 as discussed above, but also include additional functions relating to interaction with the national, provincial and local spheres of government. These councils may recommend appropriate interventions that will contribute to development and service delivery within their communities. They may also participate in the development of policies and legislation at a municipal level, as well as in development programmes. All of these councils must keep proper records and their financial statements must be audited. The councils must at least once a year meet with their respective communities to give account of its activities and finances.

2.24 In terms of clause 21 of the Bill, the election of members of councils may be conducted by the Electoral Commission, by means of a community meeting or by means of a body consisting of one or more persons appointed by the relevant Premier. This clause seeks to ensure that the election of members is

done in an effective manner. A Premier may make regulations in respect of such elections and the filling of vacancies.

- 2.25 Clauses 22, 23 and 24 of the Bill make provision for the administration of councils, support to such councils, partnerships and agreements. The Premiers must monitor councils so as to ensure the efficient and effective performance of their statutory, financial and customary obligations. If a Premier is of the view that a council cannot or does not fulfil its statutory, financial or customary obligations, the Premier must request the council to provide him or her with information relating to its performance of the relevant obligation or designate a person to investigate the matter. Subsequently the Premier, if he or she is satisfied that the council cannot or does not fulfil its statutory, financial or customary obligations, may intervene by appointing a suitable person to assist the council or to assume responsibility for its statutory, financial or customary obligations. Such appointments must be reviewed after a period of 180 days.
- 2.26 As far as partnerships and agreements are concerned, clause 24 determines with who a council may enter into a partnership or agreement. It also contains specific requirements and makes provision for monitoring by the provinces. A council may only enter into a partnership or agreement if the relevant community has been consulted and the majority of community members present at such consultation has taken a decision in support of the partnership or agreement.
- 2.27 Clause 25 of the Bill makes provision for the allocation of roles to councils and traditional and Khoi-San leaders. Any department within the national or provincial sphere of government may through legislative or other measures and in respect of any functional area of such department, provide a role for kingship or queenship councils, principal traditional councils, traditional councils, Khoi-San councils, traditional sub-councils or traditional and Khoi-San leaders. Such departments may determine the process and procedure to be followed for the provision of such roles, as well as the extent of or conditions attached to any such provision. The relevant department must monitor the execution of any such role to ensure it is consistent with the Constitution and that it is executed efficiently and effectively.
- 2.28 Clause 26 of the Bill refers to the different houses of traditional and Khoi-San leaders namely a National House, provincial houses and local houses.
- 2.29 The National House is established by clause 27 of the Bill for a term of five years. In terms of clause 28, the National House consists of senior traditional leaders and senior Khoi-San leaders, to be elected by the provincial houses. In instances where there are only recognised senior traditional leaders or only recognised senior Khoi-San leaders in a province, three leaders must be elected to be members of the National House. In instances where there are both senior traditional and senior Khoi-San leaders, four leaders must be elected as members of the National House. Specific provision is made for instances where there are no provincial houses. At least a third of the members of the National House must be women although a lower threshold may be determined if it is not possible to reach this target.
- 2.30 It should be noted that while the terms of the National House, provincial houses and local houses should be aligned, a precise alignment has been found to be impractical. For example, before the National House can be constituted, the provincial houses have to be constituted to enable them to elect the representatives to the National House. The Bill therefore determines that all the houses will have terms of five years however such terms are to end on specific dates in 2022 which dates are one month apart. This will allow sufficient time for the provincial houses to be constituted before the National House and for local houses to be constituted before the provincial houses. From 2022 onwards, the terms of the respective houses will therefore continue to end one month apart. For this purpose clause 27(2) determines that the term

of the National House as established in terms of the National House Act, prior to the enactment of this Bill, will expire on 30 June 2022. The same principle applies to the term of kingship or queenship councils, principal traditional councils, traditional councils and Khoi-San councils [please see clauses 16(4)(a), 18(5), 49(2)(b) and 50(8)].

- 2.31 The provisions relating to the election of members of the National House by provincial houses are contained in clause 29 of the Bill. Should a provincial house fail to elect members to serve in the National House, the relevant Premier will have the authority to designate the required number of members from amongst the members of the provincial house. A member of the National House may not serve more than two consecutive terms. Clause 30 determines the circumstances under which a person will not be eligible to serve as a member of the National House.
- 2.32 Clause 31 of the Bill sets out the circumstances under which the seat of a member of the National House will become vacant, while clause 32 determines how a vacancy must be filled. In terms of clause 33 the administrative seat of the National House is at the same place where the national Department of Traditional Affairs (DTA) is located, but meetings of the National House may take place where the administrative seat is or at the seat of Parliament.
- 2.33 The National House must elect one of its members as chairperson and another member as deputy chairperson in accordance with the provisions of clause 34 of the Bill. In cases where both the chairperson and deputy chairperson are absent, the National House may designate another member to act as chairperson and this must be done in accordance with the rules and orders of the House. The chairperson and deputy chairperson shall be full-time members of the National House and the Minister may also determine that certain other members be full-time members. This is provided for in clause 35.
- 2.34 The duties of the National House are contained in clause 36 of the Bill. It is clear from this clause that cooperation between the National House and provincial houses is essential for their proper functioning and there is also an emphasis on service delivery and the promotion of constitutional principles. The National House will be required to consider certain Bills referred to it by the Secretary of Parliament. The National House must be supported by a Secretary to be appointed in accordance with the provisions of clause 37 and other officers of the Department who are to be seconded to the House.
- 2.35 In terms of clause 38 of the Bill, the National House must prepare a strategic plan for a period of five years and annual performance plans. These plans must be submitted to the Minister for approval and the strategic plan must also be tabled in Parliament. The National House will have to submit quarterly reports on their performance to the Minister. These provisions will enhance the monitoring of the performance of the House and will furthermore ensure greater accountability of the House. It is further expected of the National House to enforce the code of conduct provided for in the Bill.
- 2.36 Clause 39 of the Bill determines that any Parliamentary Bill pertaining to customary law or customs of traditional and Khoi-San communities must be referred to the National House for its comments. In the case of Bills dealing with a matter referred to in section 154(2) of the Constitution, therefore legislation that affects the status, institutions, powers or functions of local government, Parliament has a discretion to refer it to the National House for comments. The National House must provide the Secretary to Parliament with its comments within 60 days from the date of such referral. If the National House has no comments on a Bill, they must inform the Secretary to Parliament accordingly.
- 2.37 In terms of clause 40 of the Bill, the National House may meet with recognised kings, queens and principal traditional leaders to discuss the



activities and programmes of the House and matters of interest to the kings, queens and principal traditional leaders. The National House may also meet with a provincial house as determined by clause 41. The National House is allowed to interact with a local house or a traditional or Khoi-San council provided it is done in consultation with the relevant provincial house. To strengthen the interaction with provincial houses, the chairperson of the National House must establish a body of chairpersons of provincial houses to regularly interact with the National House on matters of mutual interest. The Secretary of the National House must also establish a body of Secretaries of provincial houses.

- 2.38 Clause 42 of the Bill deals with the provision of administrative and financial support to the National House. The House is required to submit annual estimates of expenditure for the next financial year to enable the Department to budget for the estimated expenditure of the House, taking into consideration the overall allocation of the Department.
- 2.39 In terms of clause 43 of the Bill, the National House must annually prepare an annual report for the preceding financial year. This report must be approved by the Minister and tabled in Parliament. To ensure more certainty as to the contents of such a report, the clause sets out the minimum information and issues to be contained or addressed in the report.
- 2.40 Clause 44 of the Bill determines that the National House has the privileges and immunities as may be prescribed. Clause 45 determines that members of the National House will receive the remuneration and benefits as may be determined in accordance with the provisions of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998).
- 2.41 Clause 46 of the Bill empowers the National House to make rules and orders relating to the conduct of its business and proceedings. This includes rules and orders regulating the establishment, constitution, powers and functions, procedures and lifespan of committees of the National House. The National House may also make rules and orders in respect of the attendance of meetings by non-members as well as the status of such persons at any such meeting.
- 2.42 In terms of clause 47 of the Bill, the National House must be dissolved on the expiry of its term of office or after a vote supported by a majority of the members. It should however be noted that the Minister may summon the National House to an extraordinary meeting to attend to any urgent business, notwithstanding the dissolution of the House.
- 2.43 Clause 48 of the Bill determines that all members of the National House must take an oath or solemn affirmation as set out in Schedule 2 to the Bill.
- 2.44 Section 212(2)(a) of the Constitution determines that national or provincial legislation may provide for the establishment of houses of traditional leaders. Provincial houses are currently established in accordance with provincial legislation. Clause 49 of the Bill extends the composition of provincial houses to include both traditional and Khoi-San leaders in substantially the same proportion as they are represented in local houses. With reference to paragraph 2.30 above, clause 49(2)(b) determines that the term of a provincial house that was established and constituted prior to the enactment of this Bill, will expire on 31 May 2022.
- 2.45 Clause 50 of the Bill authorises a Premier to establish a local house of traditional and Khoi-San leaders for the area of a local, district or metropolitan municipality where there are one or more traditional or Khoi-San councils. A local house must consist of not less than five members of which at least one member must be a senior traditional leader or a senior Khoi-San leader. All senior traditional leaders and senior Khoi-San leaders who reside within the area of jurisdiction of a local, district or metropolitan municipality are members of the local house established for the specific area. For the purposes

of the composition of local houses, there is no one-size-fits-all model. Clause 50(4) therefore makes provision in detail for all the different permutations that may be applicable when establishing such houses, thus based on the unique circumstances of each local, district or metropolitan municipal area. A local house must meet at least four times per year.

- 2.46 The term of a local house is five years. With reference to paragraph 2.30 above, clause 50(8) determines that the term of a local house that was established and constituted prior to the enactment of this Bill will expire on 30 April 2022.
- 2.47 Since this is the first time that statutory provision is made for the recognition of the Khoi-San, it is proposed in clause 51 of the Bill to establish a Commission on Khoi-San Matters. The Commission will consist of not more than seven persons and will exist for a period of five years. In terms of clause 52 these persons must have qualifications or experience in or knowledge of anthropology, law, the history of the Khoi-San or the customs and customary law of the Khoi-San. To ensure public participation in the appointment of such members, clause 52 determines that the Minister must invite nominations from the general public. The Minister may also appoint a selection panel to assist him or her with the identification of the most suitable candidates to be appointed as members of the Commission. Clause 52 also contains provisions relating to the removal of a member of the Commission, while clause 53 determines when vacancies will occur. In terms of clause 54, the conditions of appointment of members of the Commission must be determined by the Minister after consultation with the Minister of Finance. Clause 55 determines that the national DTA must provide administrative and financial support to the Commission.
- 2.48 In terms of clause 56 of the Bill any community that believes that it complies with the criteria for recognition as a Khoi-San community or branch, as provided for in the Bill, may lodge an application with the Commission. Applications must be submitted within two years from a date to be determined by notice in the *Government Gazette* in terms of clause 57(2)(a). In practice this will mean that once the members of the Commission have been appointed, all the necessary administrative arrangements and support can be put in place before the notice is issued.
- 2.49 The functions of the Commission are set out in clause 57 of the Bill. In brief, the Commission has the authority to investigate and make recommendations on the recognition of Khoi-San communities, hereditary senior Khoi-San leaders and elected senior Khoi-San leaders. The recommendations of the Commission must, in terms of clause 58, be submitted to the relevant Premier for comments and thereafter to the Minister who has the authority to officially recognise the Khoi-San communities or leaders.
- 2.50 Clause 59 makes provision for a dispute resolution mechanism and must be applied in instances where provincial legislation does not make provision for such a mechanism. However, this clause does not apply in respect of disputes that are dealt with by the Commission on Traditional Leadership Disputes and Claims (CTLDC).
- 2.51 Clause 60 of the Bill authorises the Minister to make regulations. In the case of regulations concerning the roles and functions of a king, queen or principal traditional leader, the Minister must consult the relevant Premiers, MECs responsible for traditional and Khoi-San leadership matters, the National House and relevant provincial houses. All draft regulations must be published in the *Government Gazette* for public comment. Regulations must be tabled in Parliament for noting.
- 2.52 In terms of clause 61 of the Bill, a Premier may delegate any power or duty conferred on him or her by this Bill to the member of the Executive Council

responsible for traditional affairs in the particular province, excluding the power to recognise a community or leader or to withdraw such recognition.

2.53 Clause 62 of the Bill requires of the national DTA to monitor the implementation of the Bill, any regulations made in terms of the Bill and the implementation of section 81 of the Local Government: Municipal Structures Act, 1998, as it is to be amended by this Bill.

2.54 Clause 63 of the Bill contains transitional provisions.

- (a) Provision is made for the continued recognition of all traditional leaders, regents, acting traditional leaders or deputy traditional leaders. However, in the case of headmen and headwomen, clause 63(1)(c) requires of Premiers to conduct investigations within three years from the commencement of this Bill to determine whether headmanships and headwomenships as well as recognised headmen and headwomen do in fact meet the criteria for recognition. This is necessitated by the increase in the number of recognised headmen and headwomen in recent years which could be attributed to an apparent ambiguity in the Framework Act. The fact is that the Framework Act does not provide for the establishment of a headmanship or headwomanship and therefore there is legal uncertainty in respect of certain “recognitions” that took place since the commencement of the Framework Act in 2004. Clause 63(1)(c) of the Bill also determines what the consequences will be of cases where it is found that a headman or headwoman does not meet the said requirements.
- (b) As far as tribal authorities are concerned, clause 63(4) determines that such authorities are deemed to be traditional councils. However, such traditional councils must, within two years from the commencement of this Bill, meet the requirements of clause 16(2) of the Bill relating to the constitution thereof. If the timeframe of two years is not met, the Minister may apply the provisions of clause 16(2) to ensure that such authorities are reconstituted.
- (c) Provision is also made for a paramount chief, regent or acting paramount chief, that does not qualify to be recognised as a king or queen, to be deemed to be recognised as a king or queen or regent or acting king or queen. However, provision is also made that the recognition of a deemed kingship or queenship and a deemed king or queen lapses if, on the date of coming into operation of the Traditional Leadership and Governance Framework Amendment Act, 2009 (1 February 2010), the position is vacant, or on the death of the permanent incumbent king or queen, or where the position of the incumbent king or queen is occupied by a regent or acting king or queen, on the death of the regent or acting incumbent or on the date of the recognition of a successor, whereafter the kingship or queenship or king or queen is deemed to be a principal traditional community and principal traditional leader.
- (d) As far as the CTLDC is concerned, provision is made for it to continue functioning in terms of sections 21 to 26A of the Framework Act (notwithstanding the repeal of that Act) until the expiry of its term of office. However, clause 63(11) also states that any dispute that has not been disposed of by the CTLDC by the expiry of its term of office, must be dealt with in accordance with the provisions of clause 59 of this Bill.
- (e) Furthermore, provision is made for—
  - the terms of the National House, provincial houses and local houses to expire on 30 June 2022, 31 May 2022 and 30 April 2022 respectively. Notwithstanding the repeal of the National House Act by this Bill once enacted, the National House constituted in terms of that Act will continue to exist until 30 June 2022. Similar provision is made in respect of provincial and local houses; and
  - the continued application of any formula or guidelines determined in terms of the Framework Act prior to the repeal of that Act by this Bill.
- (f) Clause 63(20) makes provision for persons who have been recognised as senior Khoi-San leaders prior to the expiry of the terms of office of the existing houses of traditional leaders, to be co-opted as members of such

houses. From 2022 onwards, the recognised senior Khoi-San leaders will become full members of such houses in accordance with the provisions of clauses 28, 49 and 50 of this Bill.

- (g) Since the Bill introduces certain requirements for partnerships and agreements (see clause 24), it is important that existing partnerships and agreements be tested against such requirements. Therefore clause 63(22) determines that such partnerships and agreements must be reviewed by the relevant Premier within a period of three years from the date of commencement of this Bill. This will however not apply in respect of partnerships and agreements that, prior to the commencement of this Bill, has been entered into in accordance with enabling provisions contained in any other legislation.

2.55 Clause 64 of the Bill provides for the amendment of certain legislation and must be read with Schedule 3 to the Bill. Clause 65 provides for the repeal of existing legislation and must be read with Schedule 4 to the Bill.

2.56 Clause 66 contains the short title of the Bill.

2.57 Schedule 1 to the Bill contains a code of conduct which is applicable to all members of the National House, provincial houses, local houses, a kingship or queenship council, a principal traditional council, a traditional council, a traditional sub-council, a Khoi-San council and a branch. The provisions of the code of conduct are standard and in line with similar codes for other bodies. It deals with the general conduct of members, attendance of meetings, disclosure of interests, personal gain, declaration of interests, unauthorised disclosure of information, as well as rewards, gifts and favours. The code of conduct also contains more detailed provisions in respect of an alleged breach of the code by members of the National House. Specific provision is made for the investigation of alleged breaches of the code of conduct to ensure that a fair process is followed and that informed decisions are taken.

2.58 Schedule 2 to the Bill contains the oath and affirmation that members of the National House, provincial houses and local houses must take.

2.59 Schedule 3 to the Bill contains proposed amendments to the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, the Remuneration of Public Office Bearers Act, 1998, and the Local Government: Municipal Structures Act, 1998, as follows:

- (a) Paragraph (e) of the definition of “office-bearer” in section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act is to be amended to ensure that the Commission is authorised to make recommendations in respect of the salaries, allowances, benefits and enabling resources of all existing traditional leadership positions and the Khoi-San leadership positions envisaged in this Bill.
- (b) The Remuneration of Public Office Bearers Act is to be amended to provide for the remuneration of senior Khoi-San leaders.
- (c) Section 81 of the Local Government: Municipal Structures Act is to be amended, to provide for the participation of traditional and Khoi-San leaders in the proceedings of a municipal council. The proposed amendments make provision for—
- instances where a local house has been established for the area of jurisdiction of a local or metropolitan municipality;
  - instances where a local house has been established for the area of jurisdiction of a district municipality; and
  - instances where there are no local houses. In the case of the latter the traditional and Khoi-San leaders who may participate in the proceedings of municipal councils are to be nominated from amongst the members of the traditional and Khoi-San councils.

2.60 Depending on the different permutations, the number of traditional and Khoi-San leaders who will participate in the various municipal councils will be between one and three. It should also be noted that such participating

leaders are not municipal councillors and may therefore not vote in municipal meetings.

2.61 The existing legislation which will be repealed by the Bill, are listed in Schedule 4 to the Bill.

### 3. FINANCIAL IMPLICATIONS

3.1 The Bill makes provision for new structures and leadership positions in respect of the Khoi-San which will have additional financial implications. It should be noted that the salaries, allowances and benefits of traditional and Khoi-San leaders are to be determined in accordance with the provisions of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (Remuneration Act).

3.2 The following paragraphs provide more clarity with regard to the additional financial implications:

- (a) Recognition of senior Khoi-San leaders (clause 10): It is not possible to predict how many Khoi-San communities and leaders will eventually be recognised in accordance with the criteria for recognition provided for in the Bill. It is therefore not possible to even estimate with any degree of accuracy, what the financial implications may be. The salary of recognised Khoi-San leaders will depend on the Remuneration Commission's recommendation and the subsequent Presidential determination.
- (b) Establishment and recognition of Khoi-San councils (clause 18):
  - (i) The number of Khoi-San councils to be established and recognised in terms of clause 18, will depend on the number of Khoi-San communities that are recognised in terms of clause 5.
  - (ii) As indicated under paragraph (a) above, it is not possible to estimate how many Khoi-San communities will be recognised and consequently also not possible to estimate what the financial implications will be in respect of Khoi-San councils.
  - (iii) As far as the members of Khoi-San councils are concerned, the recognised senior Khoi-San leaders will be remunerated in accordance with a determination made in terms of the Remuneration Act. It is therefore only the other members of such councils that may receive an allowance if so determined. It is envisaged that these members will receive an allowance similar to that of non-traditional leader members of traditional councils. However, it must be noted that such a determination has not yet been made.
- (c) Support to Khoi-San councils (clause 23):
  - (i) In terms of clause 23, the national and provincial governments may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of Khoi-San councils to fulfill their functions.
  - (ii) Currently provincial governments provide support to traditional councils by way of infrastructure (offices and meeting facilities), staff, transport and other tools of trade. It is envisaged that provincial governments will have to provide equivalent support to Khoi-San councils.
- (d) Commission on Khoi-San Matters (clauses 51 and 52): The DTA will have to budget for the establishment of the Commission on Khoi-San Matters as envisaged by Chapter 4 of the Bill. This will include the remuneration of the members, office accommodation, provision of the necessary office equipment and other conditions of employment such as travel and accommodation privileges.
- (e) Composition of provincial houses of traditional and Khoi-San leaders (clause 49):
  - (i) Clause 49 determines that if a provincial house is to be established, it must be established in terms of provincial legislation. Such legislation must provide for the membership of both traditional and Khoi-San leaders. The relevant existing

- provincial legislation will therefore have to be revised to ensure alignment with the provisions of this Bill once enacted.
- (ii) If the provincial legislation makes provision for more members than is currently the case, it may have additional financial implications for the provincial governments. However, there will be no additional remuneration implications as the persons who will serve as members of provincial houses will already receive salaries on account of being recognised leaders.
- (f) Local houses of traditional and Khoi-San leaders (clause 50):
- (i) The current legislative dispensation provides for the establishment of local houses within district and metropolitan municipalities. This position is retained in the Bill, but the option is added to establish such houses for the areas of jurisdiction of local municipalities. It should be noted that it is not compulsory to establish local houses and that such houses can only be established in municipal areas where there are one or more recognised traditional or Khoi-San councils. In other words, a local house cannot be established for a municipal area where there are no traditional or Khoi-San councils. As the membership of local houses in the main, will consist of recognised leaders who are already remunerated, it is envisaged that the additional financial implications will be limited to sitting allowances for the few members referred to in clause 50(4)(a) of the Bill.
  - (ii) The provisions of the Bill in respect of the establishment of local houses have to be read together with Schedule 3 to the Bill, in particular the proposed amendments to section 81 of the Local Government: Municipal Structures Act, 1998. In terms of the current section 81 traditional leaders can be identified for the purposes of participation in the proceedings of municipal councils. The section determines that the number of traditional leaders to be identified may not exceed 20% of the total number of councillors. Therefore the number of traditional leaders so identified differs between municipal councils and may be quite large in some instances. The Bill however proposes amendments to section 81 which will provide a much more streamlined system in terms of which not less than one but not more than three members of a local house (or members of a traditional or Khoi-San council in instances where there are no local houses) will participate in the proceedings of a municipal council.

#### 4. DEPARTMENTS/BODIES/PERSONS CONSULTED

4.1 On 27 June 2011, the DTA referred the National Traditional Affairs Bill (as it was known at the time) to the following national departments for comment:

- Agriculture, Forestry and Fisheries
- Arts and Culture
- Communications
- Cooperative Governance
- Correctional Services
- Basic Education
- Defence
- Economic Affairs
- Energy

- Environmental Affairs
- Health
- Home Affairs
- Human Settlements
- International Relations and Cooperation
- Justice and Constitutional Development
- Labour
- Mineral Resources
- National Treasury
- Presidency
- Public Works
- Rural Development and Land Reform
- South African Police Services (SAPS)
- Science and Technology
- Social Development
- Sport and Recreation
- Tourism
- Trade and Industry
- Transport
- Women, Children and People with Disabilities.

4.2 On 15 July 2011, the Bill was referred to all nine provincial governments.

4.3 On 27 June 2011, the Bill was also referred to the following institutions:

- Commission on Gender Equality
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
- Demarcation Board
- ESCOM
- Human Rights Commission
- Human Science Research Council
- Independent Electoral Commission
- Ingonyama Trust Board
- Institute of People Management

- Landbank
- Pan South African Language Board
- South African Local Government Association
- STATSSA
- Telkom.

4.4 The Bill was referred to the National House of Traditional Leaders and the House received a briefing on the Bill on 24 June 2011. The chairpersons of the provincial houses were also briefed on the Bill on 24 June 2011 and the Bill was subsequently referred to all provincial houses of traditional leaders on 6 July 2011. The provincial houses received briefings on the Bill on the following dates:

- Eastern Cape Provincial House of Traditional Leaders: 25 July 2011
- Northern Cape Provincial House of Traditional Leaders: 25 July 2011
- Limpopo Provincial House of Traditional Leaders: 2 August 2011
- Mpumalanga Provincial House of Traditional Leaders: 2 September 2011
- Free State Provincial House of Traditional Leaders: 14 September 2011
- KwaZulu-Natal Provincial House of Traditional Leaders: 7 October 2011
- North West Provincial House of Traditional Leaders: 25 January 2012

Following the briefings of the National and provincial houses, the houses decided to submit a consolidated written input on the Bill to the Department. This input was considered during the analysis of all inputs and comments. On 26 April 2013, the Bill was presented to a joint meeting of the National House, Contralesa and the National Khoi-San Council. The National House furthermore received a briefing on 1 July 2013.

4.5 Two consultation teams of the DTA conducted extensive community consultation sessions on the Bill. Since this is the first time that provision is to be made in legislation for the recognition of the Khoi-San, the community consultation sessions focused on the Khoi-San. The sessions were however open for any person to attend. The following sessions were conducted in the following cities or towns on the following dates:

- 20 August 2011: Kimberley
- 22 August 2011: Calvinia and Kuboes
- 23 August 2011: Vredendal
- 24 August 2011: Vioolsdrif
- 25 August 2011: Caledon and Springbok
- 26 August 2011: Pella
- 27 August 2011: Cape Town and Kakamas
- 29 August 2011: George and Andriesvale
- 30 August 2011: Joubertina and Upington



- 31 August 2011: Willowmore and Groblershoop
- 01 September 2011: Graaff-Reinet and Griekwastad
- 02 September 2011: Fort Beaufort
- 05 September 2011: Kokstad
- 06 September 2011: Durban and Victoria-West
- 08 September 2011: Klerksdorp and Uitenhage
- 09 September 2011: Vryburg and Hankey
- 12 September 2011: Colesberg
- 13 September 2011: Bloemfontein
- 16 September 2011: Johannesburg

4.6 The Bill was discussed in detail with the National Khoi-San Council (NKC) during a meeting held from 30 June 2011 to 2 July 2011. The members of the NKC also accompanied and supported the Departmental consultation teams during the community consultations referred to in paragraph 4.5.

4.7 The Bill was also presented to officials from the provincial governments and the secretaries of the provincial houses of traditional leaders on 13 July 2011.

4.8 The Bill was presented to Contralesa on 29 July 2011 and again on 20 September 2011 (which was a joint session with the National House of Traditional Leaders).

4.9 Written inputs were received from the following departments/institutions/ persons:

- !Xum-Kumisila Kingdom
- Adrian Peters
- Amaryllis Williams
- Chief Deon Zenza
- Chief Elwin White
- Chief Margaret Coetzee-Williams
- Cobaqua Ennerdale Branch
- Colin Papier
- Commission for Gender Equality
- Congress of the First Indigenous Leaders of Southern Africa
- Damaqua Kei Korana Nation
- Dr William Langeveldt
- East Griqua Traditional Council
- First Nation Liberation Alliance (FINLA)

- Free State Griqua Council
- Gamtkwa Khoi-San Council
- Gauteng Provincial Griqua Council of the Royal House of His Majesty Adam Kok V
- Griqua National Conference of South Africa
- Griqua Royal House
- Hessekwas (R Josephs)
- Indigenous Development Foundation
- Institute for the Restoration of the Aborigines of South Africa
- Johnson Tobias
- Kabaqua Ennerdale Branch
- Kai! Korana Royal Council (Western Cape)
- KCHDC-SA
- Kei Korana-Camdeboo Municipality and Districts
- Khara Hais! KhoeSan Community Association: Upington Northern Cape
- Khoi-Bushman Kingdom National Royal Council
- Khoisan A
- Khoi-San Aboriginal Peoples of South Africa
- Khoi-San Angelin Abrahams
- Khumisoaqua Khoi-San Tribal House of Tshwane
- Kruipers of Southern Africa
- Leonard John Sayster
- Matthee S G
- National Association for the Advancement of Khoi-San People
- National House of Traditional Leaders
- National Khoi-San Council (NKC)
- Niewoudt T C
- Provincial Government: Eastern Cape: Department of Local Government and Traditional Affairs
- Provincial Government: Free State
- Provincial Government: Gauteng: Office of the Premier
- Provincial Government: KwaZulu-Natal
- Provincial Government: Limpopo: Office of the Premier

- Provincial Government: Mpumalanga: Department of Cooperative Governance and Traditional Affairs
- Provincial Government: Western Cape: Ministry for Local Government, Environmental Affairs and Development Planning.
- Richard Plaatjies
- South African Human Rights Commission
- South African Unintegrated Forces United Front
- Southern Kalahari Bushmen Tribe
- SuidKaap Khoi Raad
- Sydney Opperman
- Taaibosch-Davids Kei Korana Royal House (inputs submitted at the community consultations held at Johannesburg, Bloemfontein, Colesberg and George)
- Toetie Dow (2 inputs)
- Uitenhage and Districts Kei-Koranna Culture and Heritage Indigenous Traditional Community
- Witbooi's Nama Khoi-Khoi Traditional House of South Africa
- Anonymous (1 input).

4.10 The Department carefully analysed all the comments made during briefing sessions as well as all written comments received. Where appropriate, the Bill was refined accordingly. The Bill was on two occasions discussed in detail with the Office of the Chief State Law Adviser.

4.11 The Bill was presented to the Governance and Administration Working Group on 18 July 2013 and to the Directors-General Governance and Administration Cluster on 1 August 2013. It was considered and recommended by the Governance and Administration Cabinet Committee on 27 August 2013. On 4 September 2013, the Cabinet approved that the Bill be published in the Government *Gazette* for public comments. The Bill was subsequently published for public comments under General Notice No 947 in Government *Gazette* No 36856 of 20 September 2013. A period of 60 calendar days was allowed for written comments which period was extended to 31 December 2013.

4.12 Following the publication of the Bill as mentioned in paragraph 4.11, the DTA—

- on 11 and 12 October 2013, briefed the NKC on all clauses relevant to the Khoi and San;
- on 1 November 2013, met with officials from all provincial governments and houses of traditional leaders, with a view to address any questions of clarity they may have on the provisions of the Bill; and
- on 4 November 2013, briefed the National House of Traditional Leaders on all clauses that are different from the consultation version of the Bill that was made available in 2011.

4.13 Following the publication of the Bill in the Government *Gazette* for public comment, written inputs were received from the following departments/institutions/persons:

- Activist for the Liberation of RSA's Indigenous First Nation Peoples (Billy Steenkamp)
- Ada Koert
- BJ Marsala
- Christo C Frantz
- Claudine Fourie-Grosvenor
- Cobequa Community of the Transkei (Joseph Wade)
- Cochoqua Tribe (Gerome Daniels)
- Colleen Mary Fynn
- Commission for Gender Equality
- Council of Nguni Chiefs (Chief Lungelo Nokwaza)
- De Wee Dynasty (Niklasoa Cocho Ilanais Culture Heritage Development Council)
- Dr William Langeveldt
- East Griqualand Pioneer Council (Paul Pienaar)
- Foundation Nation Restoration Network (Hillary-Jane Solomons)
- Helen Suzman Foundation
- Hessequa Indigenous Traditional Council (Brain de Silva)
- Joseph Wade
- Kammanassie Booyens (Sydney Opperman)
- Khoi and Bushmen National Assembly (Ron Martin)
- Khoi-San Kingdom (Marius Roos)
- Korana First Nation SA (R Hoogstander)
- Legal Resource Centre
- Nama Gauteng (Moiria Daya)
- National House of Traditional Leaders
- North West House of Traditional Leaders
- Overberg Khoi-San Cahinokwas (Chief Daniel Louw)
- PJ Samuels
- Provincial Government: Eastern Cape
- Provincial Government: Free State (Office of the Premier)

- Provincial Government: KwaZulu-Natal
- Provincial Government: Limpopo
- Provincial Government: Mpumalanga
- Provincial Government: Western Cape
- Saarah Kellerman
- South African Local Government Association (SALGA)
- The Indigenous Royal House of Raamamidiam (Diau Ramatsebe)
- The Sabaim (Edgar Yochanan Phillips)
- Toetie Dow (3 inputs)
- UN Office of the High Commissioner for Human Rights (Samia Slimane)
- Vhavenda Kings Council (Kgosi Ramovha)
- Women’s Legal Centre.

4.14 On 26 August 2015, the Cabinet approved that the Bill be tabled in Parliament.

## **5. CONSTITUTIONAL IMPLICATIONS**

The Bill deals with matters of traditional leadership and institutions as referred to in sections 211 and 212 of the Constitution. The Bill furthermore makes provision for the official recognition of Khoi-San communities and leaders, as well as for the establishment of Khoi-San structures. Constitutional principles such as those contained in the Bill of Rights are promoted and emphasised throughout the Bill. The State Law Advisers certified the Bill as constitutionally sound.

## **6. COMMUNICATION IMPLICATIONS**

Due to the extensive consultation process that has been followed as set out in paragraph 4, relevant stakeholders are aware of the Bill, its content and its implications. Once enacted, the Department will inform relevant stakeholders of the enactment and will liaise with provincial governments and other relevant institutions in respect of the implementation of the Bill.

## **7. PARLIAMENTARY PROCEDURE**

7.1 The State Law Advisers and the national Department of Traditional Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution, since it deals with “traditional leadership” and “indigenous law and customary law” which are both matters listed in Schedule 4 to the Constitution.

7.2 The State Law Advisers considered the tagging of the Bill in light of Chapter 4 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), which provides for procedures that Bills must follow in Parliament. Section 76 of the Constitution provides for the parliamentary procedure for ordinary Bills affecting the provinces. In terms of section 76(3) a Bill must be dealt with in accordance with the procedure established by either section 76(1) or section 76(2) if it falls within a functional area listed in Schedule 4.

7.3 In **Stephen Segopotso Tongoane and Others v Minister for Agriculture and Land Affairs and Others**, CCT100/9 [2010] ZACC 10 the Constitutional Court stated that:

*“the test for determining how a Bill is to be tagged must be broader than that for determining legislative competence<sup>1</sup>. Whether a Bill is a section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence<sup>2</sup>.”*

- 7.4 This test compels us to consider the substance, purpose and effect of the subject matter of the proposed Bill.
- 7.5 This Bill deals with “traditional leadership” and “indigenous and customary law” which are matters listed in Part A of Schedule 4 to the Constitution. Part A lists functional areas of concurrent national and provincial competence. We are therefore of the view that the Bill should be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution.
- 7.6 The State Law Advisers are of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customary law or customs of traditional communities.

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<sup>1</sup> At paragraph 70.

<sup>2</sup> At paragraph 72.



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