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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:-

No. 41 of 2003: Traditional Leadership and Governance Framework Amendment Act, 2003.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 11 December 2003.)

ACT

To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide a statutory framework for leadership positions within the institution of traditional leadership, the recognition of traditional leaders and the removal from office of traditional leaders; to provide for houses of traditional leaders; to provide for the functions and roles of traditional leaders; to provide for dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims; to provide for a code of conduct; to provide for amendments to the Remuneration of Public Office Bearers Act, 1998; and to provide for matters connected therewith.

ARCHIVE FOR JUSTICE

PREAMBLE

WHEREAS the State, in accordance with the Constitution, seeks—

- * to set out a national framework and norms and standards that will define the place and role of traditional leadership within the new system of democratic governance;
- * to transform the institution in line with constitutional imperatives; and
- * to restore the integrity and legitimacy of the institution of traditional leadership in line with customary law and practices;

AND WHEREAS the South African indigenous people consist of a diversity of cultural communities;

AND WHEREAS the Constitution recognises—

- * the institution, status and role of traditional leadership according to customary law; and
- * a traditional authority that observes a system of customary law;

AND WHEREAS—

- * the State must respect, protect and promote the institution of traditional leadership in accordance with the dictates of democracy in South Africa;
- * the State recognises the need to provide appropriate support and capacity building to the institution of traditional leadership;
- * the institution of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights so that—
 - democratic governance and the values of an open and democratic society may be promoted; and
 - gender equality within the institution of traditional leadership may progressively be advanced; and

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- * the institution of traditional leadership must—
- promote freedom, human dignity and the achievement of equality and non-sexism;
 - derive its mandate and primary authority from applicable customary law and practices;
 - strive to enhance tradition and culture;
 - promote nation building and harmony and peace amongst people;
 - promote the principles of co-operative governance in its interaction with all spheres of government and organs of state; and
 - promote an efficient, effective and fair dispute-resolution system, and a fair system of administration of justice, as envisaged in applicable legislation,

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

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CHAPTER 1

INTERPRETATION AND APPLICATION

Definitions and application

1. (1) In this Act, unless the context indicates otherwise— 30
 “**area of jurisdiction**” means the area of jurisdiction designated for a traditional community and traditional council that have been recognised as provided for in sections 2 and 3;
 “**code of conduct**” means the code of conduct contained in the Schedule, and includes in respect of a particular province, a provincial code of conduct envisaged in section 27, if in existence; 35
 “**Commission**” means the commission established by section 22;
 “**customary institution or structure**” means those institutions or structures established in terms of customary law;
 “**district municipality**” means a district municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 40
 “**headman or headwoman**” means a traditional leader who—
 (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
 (b) is recognised as such in terms of this Act; 45
 “**headmanship**” means the position held by a headman or headwoman;
 “**king or queen**” means a traditional leader—

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- (a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law; and
- (b) recognised as such in terms of this Act;
- “**kingship**” means the position held by a king or queen;
- “**local house of traditional leaders**” means a local house of traditional leaders provided for in section 16(b);
- “**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 leadership matters;
- “**provincial house of traditional leaders**” means a provincial house of traditional leaders envisaged in section 16(a);
- “**regent**” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position in a temporary capacity until a successor to that position who is a minor, is recognised as contemplated in section 13(4);
- “**royal family**” means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family;
- “**senior traditional leader**” means a traditional leader of a specific traditional community who exercises authority over a number of headmen or headwomen in accordance with customary law, or within whose area of jurisdiction a number of headmen or headwomen exercise authority;
- “**senior traditional leadership**” means the position held by a senior traditional leader;
- “**traditional community**” means a traditional community recognised as such in terms of section 2;
- “**traditional council**” means a council established in terms of section 3;
- “**traditional leader**” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position, and is recognised in terms of this Act;
- “**traditional leadership**” means the customary institutions or structures, or customary systems or procedures of governance, recognised, utilised or practised by traditional communities;
- “**tribe**” means a tribe that was established or recognised under legislation in force before the commencement of this Act.

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

(3) Traditional 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.

CHAPTER 2

TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS

Recognition of traditional communities

2. (1) A community may be recognised as a traditional community if it—
- (a) is subject to a system of traditional leadership in terms of that community’s customs; and
- (b) observes a system of customary law.
- (2) (a) The Premier of a province may, by notice in the *Provincial Gazette*, in accordance with provincial legislation and after consultation with the provincial house of traditional leaders in the province, the community concerned, and, if applicable, the king or queen under whose authority that community would fall, recognise a community envisaged in subsection (1) as a traditional community.

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- (b) Provincial legislation referred to in paragraph (a) must—
- (i) provide for a process that will allow for reasonably adequate consultation with the community concerned; and
 - (ii) prescribe a fixed period within which the Premier of the province concerned must reach a decision regarding the recognition of a community envisaged in subsection (1) as a traditional community. 5
- (3) A traditional community must transform and adapt customary law and customs relevant to the application of this Act so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by—
- (a) preventing unfair discrimination; 10
 - (b) promoting equality; and
 - (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

Establishment and recognition of traditional councils

3. (1) Once the Premier has recognised a traditional community, that traditional community must establish a traditional council in line with principles set out in provincial legislation. 15
- (2) (a) A traditional council may have no more than 30 members, depending on the needs of the traditional community concerned.
- (b) At least a third of the members of a traditional council must be women. 20
- (c) The members of a traditional council must comprise—
- (i) traditional leaders and members of the traditional 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 (b); and
 - (ii) other members of the traditional community who are democratically elected for a term of five years, and who must constitute 40% of the members of the traditional council. 25
- (d) Where it has been proved that an insufficient number of women are available to participate in a traditional council, the Premier concerned may, in accordance with a procedure provided for in provincial legislation, determine a lower threshold for the particular traditional council than that required by paragraph (b). 30
- (3) The Premier concerned must, by notice in the *Provincial Gazette* and in accordance with the relevant provincial legislation, recognise a traditional council for that traditional community within a defined area of jurisdiction.

Functions of traditional councils

4. (1) A traditional council has the following functions: 35
- (a) Administering the affairs of the traditional community in accordance with customs and tradition;
 - (b) assisting, supporting and guiding traditional leaders in the performance of their functions; 40
 - (c) supporting municipalities in the identification of community needs;
 - (d) facilitating the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;
 - (e) recommending, after consultation with the relevant local and provincial houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council; 45
 - (f) participating in the development of policy and legislation at local level;
 - (g) participating in development programmes of municipalities and of the provincial and national spheres of government; 50
 - (h) promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
 - (i) promoting indigenous knowledge systems for sustainable development and disaster management; 55
 - (j) alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general;

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- (k) sharing information and co-operating with other traditional councils; and
(l) performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.
- (2) Applicable provincial legislation must regulate the performance of functions by a traditional council by at least requiring a traditional council to—
- (a) keep proper records; 5
(b) have its financial statements audited;
(c) disclose the receipt of gifts; and
(d) adhere to the code of conduct.
- (3) A traditional council must— 10
- (a) co-operate with any relevant ward committee established in terms of section 73 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and
(b) meet at least once a year with its traditional community to give account of the activities and finances of the traditional council and levies received by the traditional council. 15
- (4) A traditional council and its resources may not be used to promote or prejudice the interest of any political party.

Partnerships between municipalities and traditional councils

5. (1) The national government and all provincial governments must promote 20 partnerships between municipalities and traditional councils through legislative or other measures.
- (2) Any partnership between a municipality and a traditional council must—
- (a) be based on the principles of mutual respect and recognition of the status and roles of the respective parties; and 25
(b) be guided by and based on the principles of co-operative governance.
- (3) A traditional council 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.

Support to traditional councils 30

6. The national government and a provincial government may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of traditional councils within the province to fulfil their functions.

Withdrawal of recognition of traditional communities

7. (1) The withdrawal of the recognition of a community as a traditional community 35 as provided for in section 2, may only be considered where—
- (a) the community concerned requests the Premier of a province that its recognition as a traditional community be withdrawn;
(b) the provincial government concerned is requested to review the position of a community or communities that was or were divided or merged prior to 1994 40 in terms of applicable legislation; or
(c) two or more communities so recognised, request the Premier of a province that they be merged into a single traditional community.
- (2) (a) The withdrawal of the recognition of a community as a traditional community 45 must be done by the Premier of a province in accordance with applicable provincial legislation.
- (b) The provincial legislation referred to in paragraph (a) must—
- (i) provide for the withdrawal of the recognition of a traditional council at the same time that the recognition of its traditional community is withdrawn as provided for in paragraph (a); and 50
(ii) make provision for consultation by the Premier with the provincial house of traditional leaders concerned, any community that may be affected, and, if applicable, the king or queen under whose authority such a community falls, before the withdrawal of the recognition of a traditional community may be effected by way of a notice in the *Provincial Gazette*. 55

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(3) The Premier of a province must, in terms of section 2, consider the recognition of separate traditional communities or a merged traditional community where a review of the division or merger of communities envisaged by subsection (1)(b) indicates that newly constituted traditional communities must be recognised.

CHAPTER 3

5

LEADERSHIP POSITIONS WITHIN INSTITUTION OF
TRADITIONAL LEADERSHIP

Part 1: Introduction

Recognition of traditional leadership positions

8. The following leadership positions within the institution of traditional leadership are recognised: 10

- (a) Kingship;
- (b) senior traditional leadership; and
- (c) headmanship.

Part 2: Kings and queens

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Recognition of kings and queens

9. (1) Whenever the position of a king or a queen is to be filled, the following process must be followed:

- (a) The royal family must, within a reasonable time after the need arises for the position of a king or a queen to be filled, and with due regard to applicable customary law— 20
 - (i) identify a person who qualifies in terms of customary law to assume the position of a king or a queen, as the case may be, after taking into account whether any of the grounds referred to in section 10(1)(a), (b) and (d) apply to that person; and 25
 - (ii) through the relevant customary structure—
 - (aa) inform the President, the Premier of the province concerned and the Minister, of the particulars of the person so identified to fill the position of a king or a queen;
 - (bb) provide the President with the reasons for the identification of that person as a king or a queen; and 30
 - (cc) give written confirmation to the President that the Premier of the province concerned and the Minister have been informed accordingly; and
- (b) the President must, subject to subsection (3), recognise a person so identified in terms of paragraph (a)(i) as a king or a queen, taking into account— 35
 - (i) the need to establish uniformity in the Republic in respect of the status afforded to a king or queen;
 - (ii) whether a recognised kingship exists— 40
 - (aa) that comprises the areas of jurisdiction of a substantial number of senior traditional leaders that fall under the authority of such king or queen;
 - (bb) in terms of which the king or queen is regarded and recognised in terms of customary law and customs as a traditional leader of higher status than the senior traditional leaders referred to in subparagraph (aa); and 45
 - (cc) where the king or queen has a customary structure to represent the traditional councils and senior traditional leaders that fall under the authority of the king or queen; and
 - (iii) the functions that will be performed by the king or queen. 50

(2) The recognition of a person as a king or a queen in terms of subsection (1)(b) must be done by way of—

- (a) a notice in the *Gazette* recognising the person identified as king or queen; and
- (b) the issuing of a certificate of recognition to the identified person.

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(3) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the President—

(a) may refer the matter to the National House of Traditional Leaders for its recommendation; or

(b) may refuse to issue a certificate of recognition; and

(c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.

(4) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the President must recognise the person identified by the royal family if the President is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.

(5) (a) The President may, by notice in the *Gazette*, make regulations concerning—

(i) the traditional or ceremonial role of a king or queen;

(ii) the responsibilities of a king or queen in respect of nation building; and

(iii) other functions or roles of a king or queen.

(b) Regulations made in terms of paragraph (a) must be tabled in Parliament after their publication in the *Gazette*.

Removal of kings or queens

10. (1) A king or queen may be removed from office on the grounds of—

(a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;

(b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for the king or queen to function as such;

(c) wrongful appointment or recognition; or

(d) a transgression of a customary rule or principle that warrants removal.

(2) Whenever any of the grounds referred to in subsection (1)(a), (b) and (d) come to the attention of the royal family and the royal family decides to remove a king or queen, the royal family must, within a reasonable time and through the relevant customary structure—

(a) inform the President, the Premier of the province concerned and the Minister, of the particulars of the king or queen to be removed from office;

(b) furnish reasons for such removal; and

(c) give written confirmation to the President that the Premier of the province concerned and the Minister have been informed accordingly.

(3) Where it has been decided to remove a king or queen in terms of subsection (2), the President must—

(a) withdraw the certificate of recognition with effect from the date of removal;

(b) publish a notice with particulars of the removed king or queen in the *Gazette*; and

(c) inform the royal family concerned, and the removed king or queen of such removal.

(4) Where a king or queen is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 9.

*Part 3: Senior traditional leaders, headmen and headwomen***Recognition of senior traditional leaders, headmen or headwomen**

11. (1) Whenever the position of senior traditional leader, headman or headwoman is to be filled—
- (a) the royal family concerned must, within a reasonable time after the need arises for any of those positions to be filled, and with due regard to applicable customary law—
 - (i) identify a person who qualifies in terms of customary law to assume the position in question, after taking into account whether any of the grounds referred to in section 12(1)(a), (b) and (d) apply to that person; and
 - (ii) through the relevant customary structure, inform the Premier of the province concerned of the particulars of the person so identified to fill the position and of the reasons for the identification of that person; and
 - (b) the Premier concerned must, subject to subsection (3), recognise the person so identified by the royal family in accordance with provincial legislation as senior traditional leader, headman or headwoman, as the case may be.
- (2) (a) The provincial legislation referred to in subsection (1)(b) must at least provide for—
- (i) a notice in the *Provincial Gazette* recognising the person identified as senior traditional leader, headman or headwoman in terms of subsection (1);
 - (ii) a certificate of recognition to be issued to the identified person; and
 - (iii) the relevant provincial house of traditional leaders to be informed of the recognition of a senior traditional leader, headman or headwoman.
- (b) Provincial legislation may also provide for—
- (i) the election or appointment of a headman or headwoman in terms of customary law and customs; and
 - (ii) consultation by the Premier with the traditional council concerned where the position of a senior traditional leader, headman or headwoman is to be filled.
- (3) Where there is evidence or an allegation that the identification of a person referred to in subsection (1) was not done in accordance with customary law, customs or processes, the Premier—
- (a) may refer the matter to the relevant provincial house of traditional leaders for its recommendation; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.
- (4) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law.

Removal of senior traditional leaders, headmen or headwomen

12. (1) A senior traditional leader, headman or headwoman may be removed from office on the grounds of—
- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
 - (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that senior traditional leader, headman or headwoman to function as such;
 - (c) wrongful appointment or recognition; or
 - (d) a transgression of a customary rule or principle that warrants removal.
- (2) Whenever any of the grounds referred to in subsection (1)(a), (b) and (d) come to the attention of the royal family and the royal family decides to remove a senior traditional leader, headman or headwoman, the royal family concerned must, within a reasonable time and through the relevant customary structure—
- (a) inform the Premier of the province concerned of the particulars of the senior traditional leader, headman or headwoman to be removed from office; and
 - (b) furnish reasons for such removal.

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- (3) Where it has been decided to remove a senior traditional leader, headman or headwoman in terms of subsection (2), the Premier of the province concerned must, in terms of applicable provincial legislation—
- (a) withdraw the certificate of recognition with effect from the date of removal;
 - (b) publish a notice with particulars of the removed senior traditional leader, headman or headwoman in the *Provincial Gazette*; and
 - (c) inform the royal family concerned, the removed senior traditional leader, headman or headwoman, and the provincial house of traditional leaders concerned, of such removal.
- (4) Where a senior traditional leader, headman or headwoman is removed from office, a successor in line with customs may assume the position, role and responsibilities, subject to section 11.

Part 4: General provisions regarding traditional leaders

Recognition of regents

13. (1) Where the successor to the position of king, queen, senior traditional leader, headman or headwoman identified in terms of section 9 or 11 is still regarded as a minor in terms of applicable customary law or customs—
- (a) the royal family concerned must, within a reasonable time—
 - (i) identify a regent to assume leadership on behalf of the minor; and
 - (ii) through the relevant customary structure, inform the Premier of the province concerned of the particulars of the person identified as regent and the reasons for the identification of that person; and
 - (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 accordance with provincial legislation.
- (2) The provincial legislation referred to in subsection (1)(b) must at least provide for—
- (a) a notice in the *Provincial Gazette* recognising the person identified as regent in terms of subsection (1);
 - (b) a certificate of recognition to be issued to the identified regent;
 - (c) the recognition of a regent to be reviewed by the Premier at least every three years; and
 - (d) the relevant provincial house of traditional leaders to be informed of the recognition of a regent.
- (3) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law, customs or processes, the Premier—
- (a) may refer the matter to the relevant provincial house of traditional leaders for its recommendation; or
 - (b) may refuse to issue a certificate of recognition; and
 - (c) must refer the matter back to the royal family for reconsideration and resolution where the certificate of recognition has been refused.
- (4) Where the matter which has been referred back to the royal family for reconsideration and resolution in terms of subsection (3) has been reconsidered and resolved, the Premier must recognise the person identified by the royal family if the Premier is satisfied that the reconsideration and resolution by the royal family have been done in accordance with customary law.
- (5) As soon as the successor to the position of king, queen, senior traditional leader, headman or headwoman ceases to be a minor in terms of customary law, the regent recognised in terms of subsection (1) must relinquish his or her position as regent, and the rightful successor must—
- (a) in the case of a king or queen, be installed by the President in terms of section 9(1)(b), and a certificate of recognition contemplated in section 9(2)(b) must be issued after his or her name has been published in the *Gazette*; or
 - (b) in the case of a senior traditional leader, headman or headwoman, be installed by the Premier in terms of section 11(1)(b), and a certificate of recognition contemplated in section 11(2)(a)(ii) must be issued after his or her name has been published in the *Provincial Gazette*.

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(6) Where a regent has been recognised in respect of the position of a king or queen, the Premier concerned must inform the President—

- (a) of the particulars of the regent;
- (b) when the regent is supposed to relinquish his or her position as regent; and
- (c) of the withdrawal of the recognition of the regent.

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Persons acting as traditional leader

14. (1) A royal family may, in accordance with provincial legislation, identify a suitable person to act as a king, queen, senior traditional leader, headman or headwoman, as the case may be, where—

- (a) a successor to the position of a king, queen, senior traditional leader, headman or headwoman has not been identified by the royal family concerned in terms of section 9(1) or 11(1); 10
- (b) the identification of a successor to the position of a king, queen, senior traditional leader, headman or headwoman is being reconsidered and resolved in terms of section 9(3) or 11(3); or 15
- (c) a king, queen, senior traditional leader, headman or headwoman, as the case may be, would be absent from his or her area of jurisdiction under circumstances other than those provided for in section 15 and for a period of more than six months for—
 - (i) the treatment of illness; 20
 - (ii) study purposes; or
 - (iii) any other lawful purpose.

(2) An acting appointment in terms of subsection (1) must be made in accordance with provincial legislation, which legislation must at least provide for—

- (a) a certificate of appointment in an acting position to be issued by an appropriate authority; 25
- (b) a review of the acting appointment on a regular basis;
- (c) the removal of a person who has been appointed in an acting position; and
- (d) the relevant provincial house of traditional leaders to be informed of such an acting appointment. 30

(3) A person who has been appointed as an acting king, queen, senior traditional leader, headman or headwoman in terms of subsection (1) may perform the functions that are attached to the kingship, senior traditional leadership or headmanship in question.

(4) Where a person has been appointed as an acting king or queen, the authority referred to in subsection (2)(a) must inform the President of—

- (a) the acting appointment; and
- (b) the removal of the person who has been appointed as an acting king or queen.

Deputy traditional leaders

15. (1) A king, queen, senior traditional leader, headman or headwoman, as the case may be, may, after consultation with the royal family, appoint a deputy to act in his or her stead whenever that king, queen, senior traditional leader, headman or headwoman—

- (a) becomes a full-time member of a municipal council;
- (b) is elected as a member of a provincial legislature; 45
- (c) is elected as a member of the National Assembly;
- (d) is appointed as a permanent delegate in the National Council of Provinces; or
- (e) is elected to, or appointed in, a full-time position in any house of traditional leaders.

(2) An appointment in terms of subsection (1) must be made in accordance with provincial legislation, which legislation must at least provide for— 50

- (a) the removal of a person who has been appointed as a deputy;
- (b) a certificate of appointment to be issued to a deputy by an appropriate authority; and
- (c) the relevant provincial house of traditional leaders to be informed of such an appointment. 55

(3) A person who has been appointed as a deputy in terms of subsection (1) may perform the functions that are attached to the kingship, senior traditional leadership or headmanship in question.

(4) Where a king or queen has appointed a deputy in terms of subsection (1), the king or queen must inform the President of such appointment. 60

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CHAPTER 4

HOUSES OF TRADITIONAL LEADERS

Houses of traditional leaders in Republic

16. (1) The houses of traditional leaders in the Republic are—
- (a) a national house of traditional leaders and provincial houses of traditional leaders as provided for in section 212(2)(a) of the Constitution; and 5
 - (b) local houses of traditional leaders established in accordance with the principles set out in section 17.
- (2) A house of traditional leaders and its resources may not be used to promote or prejudice the interest of any political party. 10
- (3) Provincial legislation must provide for mechanisms or procedures that would allow a sufficient number of women—
- (a) to be represented in the provincial house of traditional leaders concerned; and
 - (b) to be elected as representatives of the provincial house of traditional leaders to the National House of Traditional Leaders. 15

Local houses of traditional leaders

17. (1) A local house of traditional leaders must be established in accordance with provincial legislation for the area of jurisdiction of a district municipality or metropolitan municipality where more than one senior traditional leadership exists in that district municipality or metropolitan municipality. 20
- (2) (a) The number of members of a local house of traditional leaders may not be less than five and may not be more than 10, or such other higher number not exceeding 20 as may be determined by the Minister where there are more than 35 traditional councils within the area of jurisdiction of a district municipality or metropolitan municipality.
- (b) Members of a local house of traditional leaders are elected by an electoral college consisting of all kings or queens, or their representatives, and senior traditional leaders residing within the district municipality or metropolitan municipality in question. 25
- (c) The electoral college referred to in paragraph (b) must seek to elect a sufficient number of women to make the local house of traditional leaders representative of the traditional leaders within the area of jurisdiction in question. 30
- (3) The functions of a local house of traditional leaders are—
- (a) to advise the district municipality or metropolitan municipality in question on—
 - (i) matters pertaining to customary law, customs, traditional leadership and the traditional communities within the district municipality or metropolitan municipality; 35
 - (ii) the development of planning frameworks that impact on traditional communities; or
 - (iii) the development of by-laws that impact on traditional communities;
 - (b) to participate in local programmes that have the development of rural communities as an object; or 40
 - (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities.
- (4) Where a local house of traditional leaders cannot be established in terms of subsection (1), the functions of a local house of traditional leaders referred to in subsection (3) are performed by the traditional council within the district municipality or metropolitan municipality concerned. 45

Referral of Bills to National House of Traditional Leaders

18. (1) (a) Any parliamentary Bill pertaining to customary law or customs of traditional communities must, before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House of Traditional Leaders for its comments. 50
- (b) The National House of Traditional Leaders must, within 30 days from the date of such referral, make any comments it wishes to make.
- (2) A provincial legislature or a municipal council may adopt the same procedure 55 referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law

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to a provincial house of traditional leaders or a local house of traditional leaders, as the case may be.

CHAPTER 5

ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP

Functions of traditional leaders

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

Guiding principles for allocation of roles and functions

20. (1) National government or a provincial government, as the case may be, may, through legislative or other measures, provide a role for traditional councils or traditional leaders in respect of— 10

- (a) arts and culture;
- (b) land administration;
- (c) agriculture;
- (d) health; 15
- (e) welfare;
- (f) the administration of justice;
- (g) safety and security;
- (h) the registration of births, deaths and customary marriages;
- (i) economic development; 20
- (j) environment;
- (k) tourism;
- (l) disaster management;
- (m) the management of natural resources; and
- (n) the dissemination of information relating to government policies and programmes. 25

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

- (a) seek the concurrence of— 30
 - (i) the Minister if it is an organ of state in the national sphere of government; or
 - (ii) the Member of the Executive Council responsible for traditional affairs in the province concerned if it is an organ of state of that province;
- (b) consult with— 35
 - (i) the relevant structures of traditional leadership; and
 - (ii) the South African Local Government Association;
- (c) ensure that the allocation of a role or function is consistent with the Constitution and applicable legislation;
- (d) take the customary law and customs of the respective traditional communities into account; 40
- (e) strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- (f) ensure, to the extent that it is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and 45
- (g) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions. 50

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

- (a) the implementation of the function is consistent with the Constitution; and
- (b) the function is being performed. 55

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

CHAPTER 6

DISPUTE RESOLUTION AND COMMISSION ON TRADITIONAL
LEADERSHIP DISPUTES AND CLAIMS

Dispute resolution

21. (1) (a) Whenever a dispute concerning customary law or customs arises within a traditional community or between traditional communities or other customary institutions on a matter arising from the implementation of this Act, members of such a community and traditional leaders within the traditional community or customary institution concerned must seek to resolve the dispute internally and in accordance with customs. 5

(b) Where a dispute envisaged in paragraph (a) relates to a case that must be investigated by the Commission in terms of section 25(2), the dispute must be referred to the Commission, and paragraph (a) does not apply. 10

(2) (a) A dispute referred to in subsection (1)(a) that cannot be resolved as provided for in that subsection must be referred to the relevant provincial house of traditional leaders, which house must seek to resolve the dispute in accordance with its internal rules and procedures. 15

(b) If a provincial house of traditional leaders is unable to resolve a dispute as provided for in paragraph (a), the dispute must be referred to the Premier of the province concerned, who must resolve the dispute after having consulted— 20

- (i) the parties to the dispute; and
- (ii) the provincial house of traditional leaders concerned.

Establishment of Commission

22. (1) There is hereby established a commission known as the Commission on Traditional Leadership Disputes and Claims. 25

(2) The Commission must carry out its functions in a manner that is fair, objective and impartial.

Appointment of members of Commission

23. (1) The President must appoint not more than 15 persons as members of the Commission who are knowledgeable regarding customs and the institution of traditional leadership. 30

(2) Any vacancy on the Commission must be filled in terms of subsection (1) whenever it arises.

(3) The President may remove a member of the Commission on the grounds of—

- (a) conviction by a criminal court without an option of a fine; 35
- (b) physical incapacity;
- (c) such member having been declared insolvent by a court; and
- (d) such member having been declared to be of unsound mind by a court.

Vacancies

24. A vacancy occurs whenever a member of the Commission— 40

- (a) resigns by giving written notice to the President;
- (b) is removed in terms of section 23(3); or
- (c) becomes a member of the National Assembly, a provincial legislature or a municipal council, or becomes a permanent delegate to the National Council of Provinces. 45

Functions of Commission

25. (1) The Commission operates nationally and has authority to decide on any traditional leadership dispute and claim contemplated in subsection (2) and arising in any province.

(2) (a) The Commission has authority to investigate, either on request or of its own accord— 50

- (i) a case where there is doubt as to whether a kingship, senior traditional leadership or headmanship was established in accordance with customary law and customs;
- (ii) a traditional leadership position where the title or right of the incumbent is contested; 5
- (iii) claims by communities to be recognised as traditional communities;
- (iv) the legitimacy of the establishment or disestablishment of "tribes";
- (v) disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes"; and
- (vi) where good grounds exist, any other matters relevant to the matters listed in this paragraph, including the consideration of events that may have arisen before 1 September 1927. 10
- (b) A dispute or claim may be lodged by any person and must be accompanied by information setting out the nature of the dispute or claim and any other relevant information. 15
- (c) The Commission may refuse to consider a dispute or claim on the ground that—
- (i) the person who lodged the dispute or claim has not provided the Commission with relevant or sufficient information; or
- (ii) the dispute is to be dealt with in terms of section 21(1)(a) in a case where section 21(1)(b) does not apply. 20
- (3) (a) When considering a dispute or claim, the Commission must consider and apply customary law and the customs of the relevant traditional community as they were when the events occurred that gave rise to the dispute or claim.
- (b) The Commission must—
- (i) in respect of a kingship, be guided by the criteria set out in section 9(1)(b) and such other customary norms and criteria relevant to the establishment of a kingship; and 25
- (ii) in respect of a senior traditional leadership or headmanship, be guided by the customary norms and criteria relevant to the establishment of a senior traditional leadership or headmanship, as the case may be. 30
- (c) Where the Commission investigates disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes", the Commission must, before taking a decision in terms of section 26, consult with the Municipal Demarcation Board established by section 2 of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998). 35
- (4) The Commission has authority to investigate all traditional leadership claims and disputes dating from 1 September 1927, subject to subsection (2)(a)(vi).
- (5) The Commission must complete its mandate within a period of five years or within such longer period as the President may determine.
- (6) Sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act No. 8 of 1947), apply, with the necessary changes, to the Commission. 40

Decisions of Commission

26. (1) A decision of the Commission is taken with the support of at least two thirds of the members of the Commission.
- (2) A decision of the Commission must, within two weeks of the decision being taken, be conveyed to— 45
- (a) the President for immediate implementation in accordance with section 9 or 10 where the position of a king or queen is affected by such a decision; and
- (b) the relevant provincial government and any other relevant functionary which must immediately implement the decision of the Commission in accordance with applicable provincial legislation in so far as the implementation of the decision does not relate to the recognition or removal of a king or queen in terms of section 9 or 10. 50
- (3) Any decision taken by the Commission must be conveyed to the President.

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CHAPTER 7

GENERAL PROVISIONS

Code of conduct

27. (1) The code of conduct contained in the Schedule applies to every traditional leader and traditional council and must, in respect of a particular province, be read together with the relevant provincial code as envisaged by subsection (2)(a). 5
- (2) (a) Provincial legislation may prescribe a provincial code of conduct for traditional leaders and traditional councils in the province concerned that complements the code of conduct contained in the Schedule.
- (b) A provincial code of conduct envisaged in paragraph (a) may— 10
- (i) further regulate or define the ambit of a matter mentioned in item 1 or 2 of the Schedule; or
- (ii) prescribe any other matter that a traditional leader or a traditional council must adhere to.
- (3) Applicable provincial legislation must at least provide for— 15
- (a) mechanisms to deal with any breach of the code of conduct; and
- (b) fines that may be imposed for a breach of the code of conduct, and in respect of a traditional leader also other penalties that do not include the removal of the traditional leader; and
- (c) an acting position during the period that a traditional leader is suspended for a breach of the code of conduct, if such a penalty is provided for. 20

Transitional arrangements

28. (1) Any traditional leader who was appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to have been recognised as such in terms of section 9 or 11, subject to a decision of the Commission in terms of section 26. 25
- (2) A person who, immediately before the commencement of this Act, had been appointed and was still recognised as a regent, or had been appointed in an acting capacity or as a deputy, is deemed to have been recognised or appointed as such in terms of section 13, 14 or 15, as the case may be. 30
- (3) Any "tribe" that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional community contemplated in section 2, subject to—
- (a) the withdrawal of its recognition in accordance with the provisions of section 7; or 35
- (b) a decision of the Commission in terms of section 26.
- (4) tribal authority that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 3 and must perform the functions referred to in section 4; Provided that such a tribal authority must comply with section 3(2) within one year of the commencement of this Act. 40
- (5) Any community authority that had been established in terms of applicable legislation and still existed as such immediately before the commencement of this Act, continues to exist until it is disestablished in accordance with provincial legislation, which disestablishment must take place within two years of the commencement of this Act, except where the traditional leadership related to that community authority is still under investigation by the Commission in terms of section 25(2). 45
- (6) (a) The member of the Executive Council of a province responsible for traditional affairs must, by notice in the *Provincial Gazette*, within one year 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. 50
- (b) The notice disestablishing a regional authority Ibandla Lamakhosi, Council of Chiefs or ward authority must regulate the legal, practical and other consequences of the disestablishment, including— 55

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- (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;
- (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.

(7) The Commission must, in terms of section 25(2), investigate the position of paramountcies and paramount chiefs that had been established and recognised, and which were still in existence and recognised, before the commencement of this Act, before the Commission commences with any other investigation in terms of that section.

Amendment of Act 20 of 1998, as amended by Act 21 of 2000

29. The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), is hereby amended by—

- (a) 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, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of the National House of Traditional 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.”

- (b) the substitution in section 1 for—

- (i) the definition of “benefits” of the following definition:

“‘benefits’ means in respect of a traditional leader, 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 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); (xii)”;

- (ii) 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 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 and a member of a Municipal Council; (ii)”;

- (iii) the definition of “traditional leader” of the following definition:

“‘traditional leader’ means [any person identified in terms of section 5(5)] a traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2003. (ix)”;

- (c) the substitution for section 5 of the following section:

Salaries, allowances and benefits of traditional leaders, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of National House of Traditional Leaders

5. (1) Traditional leaders, 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 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, 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; 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 nationally;
- (g) the extent of the role and functions of traditional leaders across provincial borders; and
- (h) inflationary increases. 15

(2) Despite the provisions of subsection (1), a traditional leader, 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 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— 20

- (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 leader's membership of a local House of Traditional Leaders, a provincial House of Traditional Leaders or the National House of Traditional Leaders, such a traditional leader shall be entitled to such an allowance in addition to his or her salary, allowances and benefits as a traditional leader. 25 30

(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 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 shall be entitled, subject to such conditions as the President may prescribe. 35

(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. 40

(4) The amount payable in respect of salaries, allowances and benefits to traditional leaders, members of local Houses of Traditional Leaders, members of provincial Houses of Traditional Leaders and members of the National House of Traditional Leaders shall be paid from monies appropriated for that purpose by Parliament in respect of the National House of Traditional Leaders and by a provincial legislature in respect of traditional leaders, **[and]** members of local Houses of Traditional Leaders and members of provincial Houses of Traditional Leaders, as the case may be. 45

[(5) A traditional leader is a person identified by the Minister after consultation with the Premier concerned by notice in the *Gazette* for the purposes of this Act.] 50

(6) Despite the provisions of subsection (1), a member of the National House of Traditional 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)."; 55

- (d) the substitution in section 8 for subsection (6) of the following subsection: 60
“(6) The provisions of this section shall, subject to section 5(3), not apply to a traditional leader, 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

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- (e) the substitution in section 9 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 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.”

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Short title and commencement

30. This Act is called the Traditional Leadership and Governance Framework Act, 2003, and comes into operation on a date determined by the President by proclamation in the *Gazette*.



Act No. 41, 2003 TRADITIONAL LEADERSHIP AND GOVERNANCE
FRAMEWORK ACT, 2003**SCHEDULE**
CODE OF CONDUCT**General conduct of traditional leader**

1. A traditional leader—
- (a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner; 5
 - (b) must fulfil his or her role in an efficient manner;
 - (c) may not conduct himself or herself in a disgraceful, improper or unbecoming manner;
 - (d) must comply with any applicable legislation; 10
 - (e) must act in the best interest of the traditional community or communities he or she serves;
 - (f) must promote unity amongst traditional communities;
 - (g) may not embark on actions that would create division within or amongst traditional communities; 15
 - (h) must promote nation building;
 - (i) may not refuse to provide any service to a person on political or ideological grounds;
 - (j) must foster good relations with the organs of state with whom he or she interacts; 20
 - (k) must promote the principles of a democratic and open society; and
 - (l) must disclose gifts received.

General conduct of traditional council

2. A traditional council must—
- (a) perform the functions allocated to it in good faith, diligently, honestly and in a transparent manner; 25
 - (b) execute its duties in an efficient manner;
 - (c) comply with any applicable legislation;
 - (d) act in the best interest of the traditional community it serves;
 - (e) give effect to the principles governing public administration set out in section 195 of the Constitution; and 30
 - (f) foster good relations with the organs of state with whom it interacts.