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THE PRESIDENCY

No. 1552 28 November 2019

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

Act No. 2 of 2019: Traditional Leadership and Governance Framework Amendment Act, 2019

IHHOVISI LIKAMONGAMELI

No. 1552 28 November 2019

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelelwa umphakathi:—

Ino. 2 ka 2019: Ngesichibiyelo soMthetho Wobuholi Bendabuko Kanye Nohlaka Lokuphatha, wezi-2019

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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 20 November 2019)

ACT

To amend the Traditional Leadership and Governance Framework Act, 2003, so as to make provision for extended timeframes within which kingship or queenship councils and traditional councils must be established; to provide for extended timeframes within which community authorities have to be disestablished; to align the term of office of tribal authorities, traditional councils and kingship or queenship councils with the term of the National House of Traditional Leaders; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 3A of Act 41 of 2003, as inserted by section 5 of Act 23 of 2009

1. Section 3A of the Traditional Leadership and Governance Framework Act, 2003 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

> "(1) *(a)* Once the President has recognised a kingship or queenship, that kingship or queenship must, within **[one year]** two years of the recognition, establish a kingship or queenship council.
>
> *(b)* A kingship or a queenship that has been confirmed by a decision of the Commission in accordance with this Act prior to its amendment by the Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009), must, within two years from the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, establish a kingship or a queenship council.
>
> *(c)* A kingship or a queenship other than a kingship or queenship contemplated in paragraph *(b)* that has been recognised before the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, must, within two years of such commencement establish a kingship or queenship council.";

INCAZELO EFINGQIWE:

[ ]	Amagama akubakaki abayisikwele amele okukhishiwe emthethweni osebenzayo.
______	Amagama adwetshelwe ngomugqa amele okufakiwe emthethweni osebenzayo.

(English text signed by the President)
(Assented to 20 November 2019)

UMTHETHO

Ukuchitshiyelwa koMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, ka-2003, ukuze kwenziwe imihlinzeko yezikhathi eziqhutsheziwe lapho kusungulwe imikhandlu yobukhosi noma ubundlunkulu kanye nemikhandlu yendabuko kusungulwe; ukuhlinzekela isikhathi eziqhutsheziwe lapho iziphathimandla zemiphakathi kumele zihlakazwe; ukuqondanisa imigomo yehhovisi leziphathimandla zendabuko, imikhandlu yendabuko kanye nemikhandlu yobukhosi noma yobundlunkulu nesikhathi seNdlu Yabaholi Bendabuko kuZwelonke; kanye nokuhlinzeka ngezindaba ezinjalo.

UZOMISWA yiPhalamende leRiphabhulikhi yeNingizimu Afrika, kanje:—

Ukuchitshiyelwa kwesigaba sesi-3A soMthetho wama-41 wonyaka wezi-2003, njengokuba ufakwe yisigaba sesi-5 soMthetho wama-23 wezi-2009

1. Isigaba sesi-3A soMthetho Wabaholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2003 (lapha owaziwa njengoMthethongqangi), sichitshiyelwe lapha—

(a) ngokufaka endaweni yesigatshana soku-(1) isigatshana esilandelayo:

"(1) *(a)* Uma uMongameli esebuhloniphile ubukhosi noma ubundlunkulu, lobo bukhosi noma ubundlunkulu kufanele, busungule umkhandlu wobukhosi noma wobundlunkulu ingakapheli iminyaka emibili buhlonishwe **[kulowo nyaka owodwa]** kuleyo minyaka emibili baziwe.

(b) Ubukhosi noma ubundlunkulu obuqinisekisiwe ngesinqumo seKhomishana ngokuhambisana nalo Mthetho ngaphambi kokuchitshiyelwa Kwesichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2009 (uMthetho wama-23 wezi-2009), kumele, eminyakeni emibili kusukela ekuqalisweni Kwesichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2018, kusungulwe umkhandlu wobukhosi noma wobundlunkulu.

(c) Ubukhosi noma ubundlunkulu okungebona okukhulunywe ngabo endimeni *(b)* obebaziwa ngaphambi kokuqaliswa Kwesichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2018, kumele, eminyakeni emibili yokuqaliswa lokho, busungule umkhandlu wobukhosi noma ubundlunkulu.";

(b) by the substitution in subsection (2)*(c)* for subparagraph (ii) of the following subparagraph:

"(ii) 40% of members elected democratically**[, by an electoral college consisting of all senior traditional leaders who fall under the kingship or queenship]** as contemplated in paragraph *(d)*."; and

(c) by the substitution in subsection (2) for paragraph *(d)* of the following paragraph:

"*(d)* Each traditional **[community]** council falling within the area of jurisdiction of the kingship or queenship concerned must **[in the prescribed manner,]** elect one person from the elected members of that council to serve as a member referred to in paragraph **[*(d)*]***(c)*(ii): Provided that where the number of persons so elected are less than the number of persons contemplated in paragraph *(c)*(ii), the traditional councils must each elect one additional person from the elected members of that council: Provided further that where the number of persons so elected exceed the number of members contemplated in paragraph **[*(d)*]***(c)*(ii), the persons elected by the traditional **[communities]** councils must elect from amongst themselves the number of persons contemplated in paragraph **[*(d)*]***(c)*(ii).".

Amendment of section 3B of Act 41 of 2003, as inserted by section 6 of Act 23 of 2009

2. Section 3B of the principal Act is hereby amended—

(a) by the substitution in subsection (2)*(c)* for subparagraph (ii) of the following subparagraph:

"(ii) 40% of members elected democratically**[, by an electoral college consisting of all senior traditional leaders who fall under the principal traditional council]** as contemplated in paragraph *(d)*."; and

(b) by the substitution in subsection (2) for paragraph *(d)* of the following paragraph:

"*(d)* Each traditional council falling within the area of jurisdiction of the 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 persons contemplated in paragraph *(c)*(ii), the traditional councils must each elect one additional person from 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).".

Amendment of section 28 of Act 41 of 2003, as amended by section 22 of Act 23 of 2009

3. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection:

"(4) *(a)* A 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 be reconstituted to comply with the provisions of section 3(2) within **[seven years]** two years of the commencement of **[this Act]** the Traditional Leadership and Governance Framework Amendment Act, 2018.

(b) If, prior to the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, any tribal authority was reconstituted as contemplated in paragraph *(a)*, but such reconstitution

(b) ngokufaka endaweni yesigatshana sesi-(2)*(c)* indinyana (ii) indinyana elandelayo:

"(ii) 40% wamalungu akhethwe ngokwentando yeningi**[, ngekolishi lokhetho elinabo bonke abaholi bendabuko abadala abangena ngaphansi kobukhosi noma kobundlunkulu]** njengokuba kushiwo endimeni *(d)*."; kanye

(c) ngokufaka endaweni yesigatshana sesi-(2) indinyana *(d)* yendinyana elandelayo:

"*(d)* **[Umphakathi]** Umkhandlu wendabuko ngamunye ongena endaweni yomthetho wokuphatha wobukhosi noma wobundlunkulu obuthintekayo kufanele **[bube ngendlela eshiwo,]** ukhethe umuntu oyedwa kumalungu akhethiwe omkhandlu ozosebenza njengelungu elishiwo endimeni **[*(d)*]***(c)*(ii): Uma kungukuthi inani labantu abakhethiwe kanjalo lingaphansi kwenani labantu okukhulunywe ngabo endimeni *(c)*(ii), imikhandlu yendabuko kumele ikhethe umuntu wokwengeza kumalungu akhethiwe aloyo mkhandlu: Uma kungukuthi futhi inani labantu abakhethiwe lingaphezu kwenani lamalungu elicatshangwe endimeni **[*(d)*]***(c)*(ii), abantu abakhethwe **[imiphakathi]** imikhandlu yendabuko kufanele bakhethe phakathi kwabo inani lamalungu okukhulunywe ngalo endimeni **[*(d)*]***(c)*(ii).".

Ukuchitshiyelwa kwesigaba sesi-3B soMthetho wama-41 wezi-2003, njengokuba sifakwe yisigaba sesi-6 soMthetho wama-23 wezi-2009

2. Isigaba sesi-3B soMthethongqangi sichitshiyelwe lapha—

(a) ngokufaka endaweni yesigatshana sesi-(2)*(c)* indinyana (ii) yendinyana elandelayo:

"(ii) 40% wamalungu akhethwe ngokwentando yeningi**[, ngekolishi lokhetho elinabo bonke abaholi bendabuko abadala abangena ngaphansi kobukhosi noma kobundlunkulu]** njengokuba kushiwo endimeni *(d)*."; kanye

(b) ngokufaka endaweni yesigatshana sesi-(2) indima *(d)* yendima elandelayo:

"*(d)* Umkhandlu wendabuko ngamunye ongena endaweni yomthetho womphakathingqangi wendabuko okukhulunywa ngawo kumele ukhethe umuntu oyedwa emalungeni akhethiwe aloyo mkhandlu ukuthi asebenze njengelunga okukhulunywe ngalo endimeni *(c)*(ii): Uma kungukuthi inani labantu abakhethiwe lincane kunenani labantu okukhulunywe ngalo endimeni *(c)*(ii), imikhandlu yendabuko ngayinye kumele ikhethe umuntu wokwengeza kumalunga akhethiwe aloyo mkhandlu: Uma kungukuthi futhi lapho inani labantu abanjalo abakhethiwe lidlula inani lamalunga okukhulunywe ngalo endimeni *(c)*(ii), abantu abakhethwe yimikhandlu yendabuko kumele bakhethe phakathi kwabo inani lamalunga okukhulunywe ngalo endimeni *(c)*(ii).".

Ukuchitshiyelwa kwesigaba sama-28 soMthetho wama-41 wezi-2003, njengokuba sichitshiyelwe yisigaba sama-22 soMthetho wama-23 wezi-2009

3. Isigaba sama-28 soMthethongqangi sichitshiyelwe lapha—

(a) ngokufaka endaweni yesigatshana sesi-(4) isigatshana esilandelayo:

"(4) *(a)* Isigungu esiyisiphathimandla sendabuko, ngokushesha ngaphambi kokuqala kwalo Mthetho, owasungulwa futhi wahlonishwa kanjalo, kufanele kube umkhandlu wendabuko oshiwo esigabeni 3 futhi kufanele wenze imisebenzi eshiwo kusigaba 4: Uma kungukuthi lowo mthetho wenkantolo kufanele uhloniphe kumele wenziwe kabusha ukuze uhambisane nemihlinzeko yesigaba sesi-3(2) **[eminyakeni eyisikhombisa]** eminyakeni emibili yokuqala ukusebenza **[kwalo Mthetho]** Kwesichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2018.

(b) Uma, ngaphambi kokuqaliswa kokusebenza Kwesichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2018, noma yisiphi isigungu esiyisiphathimandla sendabuko esenziwe

did not comply with all the requirements of section 3(2), such tribal authority is deemed to be a traditional council and must, within two years of the commencement of the Traditional Leadership and Governance Framework Amendment Act, 2018, be reconstituted in full compliance with the provisions of section 3(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, take the necessary steps to ensure that the tribal authorities and traditional councils contemplated in paragraphs *(a)* and *(b)* are reconstituted as provided for in this subsection.

(d) A Premier must give notice in the Provincial *Gazette* of any reconstitution done in terms of this subsection.

(e) If a Premier has not issued a formula in accordance with section 3(2)*(a)*, any guidelines that have been issued by the Minister as contemplated in that section shall be deemed to be such formula for the purposes of any reconstitution as contemplated in this subsection.

(f) The term of office of any tribal authority or traditional council that has been reconstituted in accordance with this subsection must, with effect from such reconstitution, be aligned with the term of the National House of Traditional Leaders.

(g) Following the reconstitution of any tribal authority or traditional council in terms of paragraph *(a)*, *(b)* or *(c)*, and taking into account the provisions of paragraph *(f)*, any subsequent reconstitution from 2022 onwards, must be done in accordance with the provisions of section 3(2) and (3).'';

(b) by the substitution for subsection (5) of the following subsection:

''(5) *(a)* 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, subject to paragraphs *(b)*, *(c)* and *(d)*, disestablished in accordance with provincial legislation, which disestablishment must take place by notice in the Provincial *Gazette* within **[five years]** two years of the commencement of **[this Act]** the Traditional Leadership and Governance Framework Amendment Act, 2018, except where the traditional leadership related to that community authority is still under investigation by the Commission in terms of section 25(2) in which case the community authority concerned must be administered as if the relevant establishing legislation had not been repealed.

(b) 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 of traditional leaders, by notice in the Provincial *Gazette* disestablish such community authority.

(c) A notice contemplated in paragraphs *(a)* and *(b)* 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.

(d) If the timeframe contemplated in this subsection is not met, the Minister may, within one year after the timeframe has lapsed and after consultation with the relevant Premier, community authority and

kabusha njengokuba kushiwo endimeni *(a)*, kodwa lokho kwenziwa kabusha akuhambisananga nezimfuneko zesigaba sesi-3(2), isigungu esiyisiphathimandla sendabuko esinjalo kumele sithathwe njengomkhandlu wendabuko futhi kumele, eminyakeni emibili okuqaliswe khona Isichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2018, senziwe kabusha ukuze sihambisane ngokugcwele nemihlinzeko yesigaba sesi-3(2).

(c) Uma izikhathi okukhulunywe ngazo endimeni *(a)* noma *(b)* zingagcinwanga, sekuphele isikhathi seminyaka emibili futhi emuva kokuxoxisana noNdunankulu, uNgqongqoshe angathatha izinyathelo ezifanele ukuqinisekisa ukuthi imithetho yenkantolo kanye nemikhandlu yendabuko okukhulunywe ngayo ezindimeni *(a)* kanye no *(b)* zenziwe kabusha njengokuba kushiwo kulesi sigatshana.

(d) UNdunankulu kumele akhiphe isaziso kuSomqulu wesiFundazwe nganoma yikuphi ukwenziwa kabusha ngokwemigomo yalesi sigatshana.

(e) Uma uNdunankulu engakakhiphi inqubo maqondana nesigaba sesi-3(2)*(a)*, noma yimiphi imihlahlandlela ekhishwe nguNgqongqoshe njengokuba kushiwo kuleso sigaba kumele ithathwe njengenqubo ngezinhloso zanoma yikuphi ukwenziwa kabusha okukhulunywe ngakho kulesi sigatshana.

(f) Isikhathi sokuba sehhovisi kwanoma yisiphi isigungu esiyisiphathimandla sendabuko noma umkhandlu wendabuko okwenziwe kabusha ngokuhambisana nalesi sigatshana, kusukela kulokho kwenziwa kabusha, kumele kuhambisane nemigomo Yendlu Yabaholi Bendabuko Kuzwelonke.

(g) Kulandela ukwenziwa kabusha kwanoma yisiphi isigungu esiyisiphathimandla sendabuko noma umkhandlu wendabuko ngokwendima *(a)*, *(b)* noma *(c)*, kanye nokucabangela imihlinzeko yendima *(f)*, noma yikuphi ukwenziwa kabusha kusukela ngonyaka wezi-2022 kuya phambili, kumele kwenziwe ngokuhambisana nemihlinzeko yesigaba sesi-3(2) kanye nesesi-(3).'';

(b) ngokufaka endaweni yesigatshana sesi-(5) isigatshana esilandelayo:

''(5) *(a)* Nanoma yimuphi umthetho womphakathi owasungulwa ngokomthetho osebenzayo futhi obulokhu unjalo ngokushesha ngaphambi kokuqala ukusebenza kwalo Mthetho, uyaqhubeka nokuphila, ngokuncike ezindimeni *(b)*, *(c)* kanye no-*(d)*, kuze kubhidlizwe ngokuhambisana nomthetho wesifundazwe, lokhu kubhidliza kufanele kwenzeke ngesaziso kuSomqulu wesiFundazwe eminyakeni **[emihlanu]** emibili yokuqalisa **[lo Mthetho]** Isichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2018, ngaphandle kwalapho ubuholi bendabuko obuhambelana nomthetho womphakathi busaphenywa yikhomishini ngokwesigaba 25(2) lapho umthetho womphakathi oqondene kufanele uphathwe sengathi umthetho wokusungula ofanele ubungachithwanga.

(b) Lapho umthetho wesifundazwe ungekho njengokuba kushiwo endimeni *(a)*, uNdunankulu wesifundazwe, emuva kokuxoxisana nanoma yiliphi ilunga loMkhandlu ophezulu wesifundazwe, ilunga lomthetho womphakathi elifanele kanye nendlu yabaHoli bendabuko yesifundazwe, engenza isaziso kuSomqulu wesiFundazwe sokubhidliza umthetho womphakathi onjalo.

(c) Isaziso okukhulunywe ngaso ezindimeni *(a)* kanye no *(b)* kumele silawule imiphumela yezomthetho, esebenzekayo kanye neminye yokuhlakazwa, okuhlanganisa—

(i) ukudluliswa kwempahla, izikweletu kanye nokuphathwa kanye namanye amarekhodi kusiphathimandla esifanele;

(ii) ukushiya ihhovisi kwanoma yibaphi obasezikhundleni besigungu esiyisiphathimandla esinjalo; kanye

(iii) nokushintshwa kwabasebenzi balowo mthetho womphakathi onjalo ngokuhambisana nomthetho ofanele.

(d) Uma isikhathi okukhulunywe ngaso kulesi sigatshana singagcinwanga, uNgqongqoshe, esikhathini esingangonyaka emuva kokuphela kwesikhathi kanye nangemuva kokuxoxisana noNdunankulu

provincial house of traditional leaders, take the necessary steps to ensure that the relevant community authority is disestablished in accordance with the provisions of this subsection.''; and

(c) by the addition of the following subsection:

''(12) The term of office of a kingship or queenship council established in accordance with the provisions of section 3A(1) must, with effect from the date of such establishment, be aligned with the term of the National House of Traditional Leaders.''.

Short title

4. This Act is called the Traditional Leadership and Governance Framework Amendment Act, 2019.

ofanele, umthetho womphakathi kanye nendlu yabelaphi bendabuko esifundazweni, angathatha izinyathelo ezifanele ukuqinisekisa ukuthi inhlangano yesiphathimandla somphakathi esifanele ihlakazwe ngokuhambisana nemihlinzeko yalesi sigatshana.''; kanye

(c) ngokwengeza isigatshana esilandelayo: '

''(12) Isikhathi sokuba sehhovisi somkhandlu wobukhosi noma wobundlunkulu osungulwe ngokuhambisana nemihlinzeko yesigaba sesi-3A(1) kumele sihambisane nesikhathi seNdlu Yabelaphi Bendabuko Kuzwelonke, kusukela ngosuku lokusungulwa okunjalo.'';

Isihloko esifushane

4. Lo Mthetho ubizwa Ngesichibiyelo soMthetho Wobuholi Bendabuko kanye Nohlaka Lokuphatha, wezi-2019.