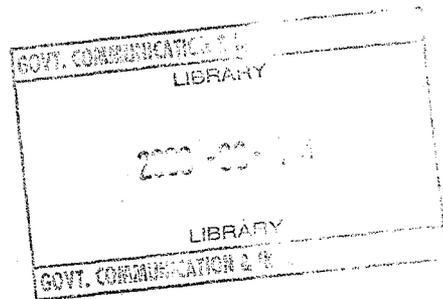


REPUBLIC OF SOUTH AFRICA

TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK BILL

*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill
published in Government Gazette No. 25437 of 4 September 2003)
(The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)



[B 58—2003]

ISBN 0 621 33919 9

No. of copies printed 1 800

BILL

To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide for the functions and roles of traditional leaders; 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 dispute resolution and the establishment of the Commission on Traditional Leadership Disputes and Claims; and to provide for matters connected therewith.

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 community 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 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
- * 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,

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

ARRANGEMENT OF SECTIONS

Sections

CHAPTER 1	5
INTERPRETATION AND APPLICATION	
1. Definitions and application	
CHAPTER 2	
TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS	
2. Recognition of traditional communities	10
3. Establishment and recognition of traditional councils	
4. Functions of traditional councils	
5. Partnerships between municipalities and traditional councils	
6. Support to traditional councils	
7. Withdrawal of recognition of traditional communities	15
CHAPTER 3	
LEADERSHIP POSITIONS WITHIN INSTITUTION OF TRADITIONAL LEADERSHIP	
8. Recognition of traditional leadership positions	
9. Recognition of kings and queens	20
10. Recognition of other traditional leaders	
11. Recognition of regent	
12. Person acting as traditional leader	
13. Deputy traditional leaders	
14. Removal of traditional leader	25
CHAPTER 4	
HOUSES OF TRADITIONAL LEADERS	
15. Houses of traditional leaders in Republic	
16. District houses of traditional leaders	
CHAPTER 5	
ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP	
17. Functions of traditional leaders and code of conduct	
18. Allocation of roles, functions and guiding principles	
CHAPTER 6	
DISPUTE RESOLUTION AND COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS	
19. Dispute resolution	
20. Establishment of Commission	
21. Appointment of members of Commission	
22. Vacancies	40
23. Functions of Commission	
24. Decisions of Commission	

CHAPTER 7

GENERAL PROVISIONS

25. Transitional arrangements
26. Short title and commencement

CHAPTER 1

5

INTERPRETATION AND APPLICATION

Definitions and application

1. (1) In this Act, unless the context indicates otherwise—
- “**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; 10
- “**Commission**” means the commission established by section 20;
- “**customary institution or structure**” means those institutions or structures established in terms of customary law;
- “**district house of traditional leaders**” means a district house of traditional leaders provided for in section 15(b); 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 leader who—
- (a) is under the authority of, or exercises authority within the area of jurisdiction of, a principal traditional leader in accordance with customary law; and 20
- (b) is recognised as such in terms of this Act;
- “**headmanship**” means the position held by a headman or headwoman;
- “**king or queen**” means a traditional leader—
- (a) under whose authority, or within whose area of jurisdiction, principal traditional leaders exercise authority in accordance with customary law; and 25
- (b) recognised as such in terms of this Act.
- “**kingship**” means the position held by a king or queen;
- “**metropolitan municipality**” means a metropolitan municipality as defined in section 1 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 30
- “**Minister**” means the national Minister responsible for traditional leadership matters;
- “**principal 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; 35
- “**principal traditional leadership**” means the position held by a principal traditional leader;
- “**provincial house of traditional leaders**” means a provincial house of traditional leaders envisaged in section 15(a); 40
- “**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 11(4); 45
- “**royal family**” means the core customary institution or structure consisting of close relatives of the ruling family within a traditional community, who have been identified in terms of custom;
- “**traditional community**” means a traditional community recognised as such in terms of section 2; 50
- “**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. 55

(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.

5

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 own customary rules; and
 - (b) observes a system of customary law.

(2) 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 and the community concerned, recognise a community envisaged in subsection (1) as a traditional community.

(3) A traditional community must transform and adapt applicable customs and customary law so as to comply with the relevant principles contained in the Bill of Rights in the Constitution.

Establishment and recognition of traditional councils 20

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.

- (2) The members of a traditional council, of whom at least a third must be women—
- (a) may be no more than 30, depending on the needs of the traditional community concerned; and
 - (b) must comprise—
 - (i) traditional leaders and members of the traditional community selected by the principal traditional leader concerned in terms of custom; and
 - (ii) other members of the traditional community who are democratically elected, and who must constitute 25% of the members of the traditional council.

(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.

35

Functions of traditional councils

4. (1) A traditional council has the following functions:
- (a) 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; 40
 - (b) supporting municipalities in the identification of community needs;
 - (c) recommending appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
 - (d) participating in development programmes of municipalities and of the provincial and national spheres of government; 45
 - (e) promoting indigenous knowledge systems for sustainable development;
 - (f) administering the affairs of the traditional community in accordance with custom and tradition;
 - (g) assisting, supporting and guiding traditional leaders in the performance of their functions; 50
 - (h) participating in the development of policy and legislation at local level;
 - (i) promoting the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;

- (j) alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the wellbeing of people living in such area of jurisdiction; and
- (k) performing the functions conferred by customary law, customs and statutory law consistent with the Constitution.

5

(2) Provincial legislation may regulate the performance of functions by a traditional council by requiring a traditional council to—

- (a) keep proper records;
- (b) have its financial statements audited;
- (c) disclose the receipt of gifts;
- (d) adhere to a prescribed code of conduct.

10

Partnerships between municipalities and traditional councils

5. (1) The National Government and all provincial governments must promote partnerships between municipalities and traditional councils through legislative and other measures.

15

(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 role of the respective parties; and
- (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 as provided for by law.

20

Support to traditional councils

6. 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.

25

Withdrawal of recognition of traditional communities

7. (1) (a) The withdrawal of the recognition of a community as a traditional community as provided for in section 2 must be done in accordance with applicable provincial legislation.

(b) The provincial legislation referred to in paragraph (a) must 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).

30

(2) The withdrawal of the recognition of a community as a traditional community must be considered where—

- (a) the community concerned requests 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 in terms of racially discriminatory measures prior to 1994; or
- (c) two or more communities request their merger into a single traditional community.

35

40

(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 (2)(b) indicates that newly constituted traditional communities must be recognised.

45

(4) The provincial legislation referred to in subsection (1) must make provision for consultation with the provincial house of traditional leaders concerned and any community that may be affected, before the withdrawal of the recognition of a traditional community may be effected by way of a notice in the *Provincial Gazette*.

CHAPTER 3

LEADERSHIP POSITIONS WITHIN INSTITUTION OF
TRADITIONAL LEADERSHIP**Recognition of traditional leadership positions**

8. The following leadership positions within the institution of traditional leadership are recognised: 5

- (a) kingship;
- (b) principal traditional leadership; and
- (c) headmanship.

Recognition of kings and queens 10

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 or extended royal family, where applicable, must within a reasonable time after the need arose for the position of a king or a queen to be filled, and with due regard to applicable customary law— 15
 - (i) identify a candidate in terms of customary law to assume the position of a king or a queen, as the case may be; and
 - (ii) through customary channels—
 - (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; 20
 - (bb) provide the President with the reasons for the identification of that person as a king or a queen; and
 - (cc) furnish proof to the President that the Premier of the province concerned and the Minister have been informed accordingly; and 25
- (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 a framework prescribed by the President that—
 - (i) provides for the status and benefits of a king or a queen in a province, which status and benefits must be uniform throughout the Republic of South Africa; 30
 - (ii) provides uniform guidelines on the traditional or ceremonial role or any other function of a king or queen in a province; and
 - (iii) provides for an additional traditional or ceremonial role of a king or a queen that must be consistent with the Constitution. 35

(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 candidate identified as king or queen; and
- (b) the issuing of a certificate of recognition to the identified candidate. 40

(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, the President—

- (a) may refuse to issue a certificate of recognition;
- (b) may refer the matter to the National House of Traditional Leaders for its recommendation; or 45
- (c) may refer the matter back to the royal family or extended royal family, where applicable, for reconsideration and resolution.

(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 or extended royal family, if the President is satisfied that the reconsideration and resolution by the royal family has been done in accordance with customary law. 50

Recognition of other traditional leaders

10. (1) Whenever the position of principal traditional leader, headman or headwoman is to be filled— 55

- (a) the royal family concerned must, within a reasonable time after the need arose for any of those positions to be filled, and with due regard to applicable customary law—
 - (i) identify a candidate in terms of customary law to assume the position in question; and
 - (ii) through customary channels 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 principal 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 candidate identified as principal traditional leader, headman or headwoman in terms of subsection (1); and
 - (ii) the issuing of a certificate of recognition to the identified candidate.
- (b) Provincial legislation may also provide for the term of office of a headman or headwoman.
- (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, the Premier—
- (a) may refuse to issue a certificate of recognition; and
 - (b) must refer the matter back to the royal family for reconsideration and resolution.

Recognition of regent

11. (1) Where the successor to the position of king, queen, principal traditional leader, headman or headwoman identified in terms of section 9 or 10 is still regarded as a minor in terms of applicable customary law or custom—
- (a) the royal family concerned must, within a reasonable time—
 - (i) identify a regent to assume leadership on behalf of the minor;
 - (ii) 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 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 candidate identified as regent in terms of subsection (1);
 - (b) the issuing of a certificate of recognition to the identified regent; and
 - (c) the recognition of a regent to be reviewed by the Premier at least every three years.
- (3) Where there is evidence or an allegation that the identification of a person as regent was not done in accordance with customary law or processes, the Premier—
- (a) may refuse to issue a certificate of recognition; and
 - (b) must refer the matter back to the royal family for reconsideration and resolution.
- (4) As soon as the successor to the position of king, queen, principal traditional leader, headman or headwoman 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 must be installed by the Premier in terms of section 10(1)(b), and a certificate of recognition contemplated in section 10(2)(a)(ii) must be issued after his or her name has been published in the *Provincial Gazette*.

Person acting as traditional leader

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

- (a) a successor to the position of a king, queen, principal traditional leader, headman or headwoman has not been identified by the royal family concerned in terms of section 9(1) or 10(1);
 - (b) the identification of a successor to the position of a king, queen, principal traditional leader, headman or headwoman is being reconsidered and resolved in terms of section 9(3) or 10(3); or
 - (c) a king, queen, principal 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 13 and for a period of more than six months for—
 - (i) the treatment of illness;
 - (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) the removal of a person who has been appointed in an acting position;
 - (b) the issuing of a certificate of appointment in an acting position by an appropriate authority; and
 - (c) a review of the acting appointment on a regular basis.
- (3) A person who has been appointed as an acting king, queen, principal traditional leader, headman or headwoman in terms of subsection (1) may exercise any powers and perform any duties that are attached to the kingship, principal traditional leadership or headmanship in question.

Deputy traditional leaders

13. (1) A king, queen, principal 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, principal 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;
 - (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—
- (a) the removal of a person who has been appointed as a deputy; and
 - (b) the issuing of a certificate of appointment to a deputy by an appropriate authority.
- (3) A person who has been appointed as a deputy in terms of subsection (1) may exercise any powers and perform any duties that are attached to the kingship, principal traditional leadership or headmanship in question.

Removal of traditional leader

14. (1) A traditional leader 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 that makes it impossible for that traditional leader to function as such;
 - (c) wrongful appointment or recognition;
 - (d) a transgression of a customary rule or principle that warrants removal.
- (2) Whenever a traditional leader is to be removed from office on any of the grounds referred to in subsection (1)(a), (b) or (d), the royal family concerned must, within a reasonable time—
- (a) inform the Premier of the province concerned of the particulars of the traditional leader to be removed from office; and
 - (b) furnish reasons for the request for such removal.
- (3) 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 traditional leader in the *Provincial Gazette*; and
 - (c) inform the royal family concerned and the removed traditional leader of such removal.
- (4) Where a traditional leader is removed from office, a successor in line with customary rules of succession may assume the position, role and responsibilities, subject to section 9 or 10, as the case may be. 5

CHAPTER 4

HOUSES OF TRADITIONAL LEADERS

Houses of traditional leaders in Republic 10

15. 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
 - (b) district houses of traditional leaders established in accordance with the principles set out in section 16. 15

District houses of traditional leaders

16. (1) A district 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 principal traditional leadership exists in that district municipality or metropolitan municipality. 20

(2) (a) The number of members of a district 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 or metropolitan municipality.

(b) Members of a district house of traditional leaders are elected by an electoral college consisting of all kings or queens, or their representatives, and principal traditional leaders residing within the district municipality in question. 25

(3) The functions of a district house of traditional leaders are—

- (a) to advise the district municipality or metropolitan municipality in question on— 30
 - (i) matters pertaining to customary law, custom, traditional leadership and the traditional communities within the district municipality or metropolitan municipality;
 - (ii) the development of planning frameworks that impact on traditional communities; or 35
 - (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
- (c) to participate in local initiatives that are aimed at monitoring, reviewing or evaluating government programmes in rural communities. 40

(4) Where a district house of traditional leaders cannot be established in terms of subsection (1), the functions of a district house of traditional leaders referred to in subsection (3) are performed by the traditional council within the district municipality or metropolitan municipality concerned.

CHAPTER 5 45

ROLES AND FUNCTIONS OF TRADITIONAL LEADERSHIP

Functions of traditional leaders and code of conduct

17. (1) A traditional leader performs the functions provided for in terms of customary law and practices of the traditional community concerned, and in applicable legislation.

(2) (a) A traditional leader must adhere to a code of conduct prescribed by or in terms of provincial legislation. 50

(b) The code of conduct referred to in paragraph (a)—

- (i) must at least provide for the disclosure of gifts received by a traditional leader;

- (ii) may provide for penalties other than the removal of a traditional leader as envisaged in section 14 for any contravention of the code of conduct; and
- (iii) may provide for an acting position during the period that a traditional leader is suspended for any contravention of the code of conduct.

Allocation of roles, functions and guiding principles 5

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

- (a) arts and culture;
- (b) land administration and agriculture; 10
- (c) health and welfare;
- (d) the administration of justice;
- (e) safety and security;
- (f) the registration of births, deaths and customary marriages;
- (g) economic development; 15
- (h) environment and tourism;
- (i) the management of natural resources; and
- (j) the dissemination of information relating to government policies and programmes.

(2) Whenever an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditional leaders in terms of subsection (1), that organ of state must— 20

- (a) seek the concurrence of—
 - (i) the Minister if it is an organ of state in the national sphere of government; 25
 - 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 the relevant structures of traditional leadership;
- (c) ensure that the allocation of a role or function is consistent with the Constitution and applicable legislation; 30
- (d) take the customary law and practices of the respective traditional communities into account;
- (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; 35
- (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
- (g) promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery through the allocation of roles and functions. 40

CHAPTER 6

DISPUTE RESOLUTION AND COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

Dispute resolution 45

19. (1) (a) Whenever a dispute concerning customary law or custom 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 custom. 50

(b) Where a dispute envisaged in paragraph (a) relates to a case that must be investigated by the Commission in terms of section 23(2), the dispute must be referred to the Commission, and paragraph (a) does not apply.

(2) (a) A dispute referred to in subsection (1) that cannot be resolved as provided for in that subsection must be referred to the relevant provincial house of traditional 55

leaders, which house must seek to resolve the dispute in accordance with its internal rules and procedures.

(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— 5

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

Establishment of Commission

20. (1) There is hereby established a commission known as the Commission on Traditional Leadership Disputes and Claims. 10

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

Appointment of members of Commission

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

(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— 20
- (a) conviction by a criminal court without an option of a fine;
 - (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

22. A vacancy occurs whenever a member of the Commission— 25

- (a) resigns by giving written notice to the President;
- (b) is removed in terms of section 21(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. 30

Functions of Commission

23. (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— 35

- (i) a case where there is doubt as to whether a kingship, principal traditional leadership or headmanship was established in accordance with customary law and custom;
- (ii) a traditional leadership position where the title or right of the incumbent is contested; 40
- (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 of tribes; and 45
- (vi) where good grounds exist, any other matters relevant to the matters listed in this paragraph.

(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. 50

- (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 19(1)(a) in a case where section 19(1)(b) does not apply. 55

(d) The Commission may on its own initiate an investigation into any matter referred to in paragraph (a).

(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 facts occurred that gave rise to the dispute or claim. 5

(b) The Commission must be guided by the customary norms and criteria relevant to the establishment of a kingship, principal traditional leadership or headmanship as the case may be.

(4) The Commission has authority to investigate all traditional leadership claims and disputes dating from 1 September 1927, subject to subsection (2)(a)(vi). 10

(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.

Decisions of Commission 15

24. (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 the relevant provincial government and any other relevant functionary which must immediately implement the decision of the Commission in accordance with applicable provincial legislation. 20

(3) Any decision taken by the Commission must be conveyed to the President.

CHAPTER 7

GENERAL PROVISIONS

Transitional arrangements 25

25. (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 10, subject to a decision of the Commission in terms of section 24.

(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, is deemed to have been recognised or appointed as such in terms of section 11, 12 or 13, as the case may be. 30

(3) Any 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 four years of the commencement of this Act. 35

(4) 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 five years of the commencement of this Act. 40

(5) (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, Councils of Chiefs and ward authorities functioning under tribal authorities that have been established in terms of applicable legislation before the commencement of this Act. 45

(b) The notice disestablishing a regional authority must regulate the legal, practical and other consequences of the disestablishment, including— 50

(i) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, a municipality or district 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. 55

Short title and commencement

26. 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*.

MEMORANDUM ON THE OBJECTS OF THE TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK BILL

1. BACKGROUND

The drafting of the Traditional Leadership and Governance Framework Bill, 2003 ("the Bill") was preceded by a White Paper policy process. The White Paper policy process comprised four phases. During the first phase, a national audit on the institution of traditional leaders was conducted. This audit focused on, amongst others, the identification of statutes in terms of which traditional leadership institutions were established or carried out their responsibilities, their role and functions, and the relationship between the institution and other structures of governance.

The second phase saw the production and launch of the Discussion Document towards a White Paper on Traditional Leadership and Institutions. The views of traditional leaders, organised local government, government departments, statutory bodies, the general public and other relevant stakeholders were obtained on identified policy issues.

The third phase resulted in the production of a draft White Paper. The draft White Paper outlined various preliminary policy positions.

The fourth phase saw the finalisation of this White Paper following consultations on the draft White Paper. The White Paper on Traditional Leadership and Governance paved the way for the drafting of national framework legislation (the Bill) relating to the institution of traditional leadership, which legislation is to be complemented by provincial legislation.

Matters associated with traditional leadership are regulated in the Bill in such a way as to achieve the overall objectives set out in the White Paper on Traditional Leadership and Governance, taking into account the gender issue.

2. OBJECTS OF BILL

The Bill seeks to provide for—

- * recognition of traditional communities;
- * establishment and recognition of traditional councils;
- * functions of traditional councils;
- * partnerships between municipalities and traditional councils;
- * support for traditional councils;
- * withdrawal of recognition of traditional communities;
- * merger or division of traditional communities;
- * recognition of traditional leadership positions;
- * recognition of traditional leaders;
- * recognition of a regent;
- * acting traditional leaders;
- * deputy traditional leaders;
- * removal of traditional leaders;
- * structuring of houses of traditional leaders;
- * district houses of traditional leaders;
- * the guiding principles for allocating roles and functions to traditional councils and traditional leaders;
- * dispute resolution;
- * establishment of the Commission on Traditional Leadership Disputes and Claims;
- * appointment of members of the Commission;
- * vacancies on the Commission;
- * functions of the Commission; and
- * decisions of the Commission.

3. BODIES/ORGANISATIONS CONSULTED

The Bill was published in the *Government Gazette* for public comment in terms of section 154(2) of the Constitution. The Bill was also placed on the website of the Department of Provincial and Local Government, and a number of workshops were held with stakeholders to discuss the Bill.

A total of 51 submissions on the Bill were received from the following stakeholders:

- * Organisations of traditional leaders;

- * Traditional leadership structures;
- * Local government structures;
- * Statutory bodies;
- * Government departments (national and provincial);
- * Research institutions;
- * Cultural organisations; and
- * Individuals.

4. FINANCIAL IMPLICATIONS FOR STATE

There will be financial implications associated with the Bill. These arise as a result of the District Houses of Traditional Leaders to be established, the Commission on Traditional Leadership Disputes and Claims to be established, and the recognition of headmen who are currently not being paid as traditional leaders.

The envisaged costs pertaining to the establishment of District Houses of Traditional Leaders are R33 302 074 p.a. Costs pertaining to the operational programmes of the Houses, as well as the infrastructural needs, have not yet been determined. Funding for the establishment of the District Houses will be budgeted for nationally and distributed through district and relevant metropolitan municipalities.

The envisaged costs pertaining to the establishment of the Commission on Traditional Leadership Disputes and Claims are R8 528 895 p.a. There may also be financial implications resulting from the decisions of the Commission which can only be determined once the Commission is operational. The Commission is being budgeted for by the Department of Provincial and Local Government.

As a result of the recognition of headmanship as a level of traditional leadership, it is estimated that an amount of R60 476 548 would be required to pay salaries to headmen who are currently not being paid.

5. IMPLICATIONS FOR MUNICIPALITIES

Municipalities would have to forge partnerships with traditional councils, which must be guided and based on the principle of co-operative governance, mutual respect and recognition of the status and role of the respective parties.

6. IMPLICATIONS FOR PROVINCES

The various provinces are expected to develop provincial legislation that would provide for the following matters:

- * Qualification for recognition as a traditional community;
- * regulation of the exercise of functions by a traditional council;
- * regulation of the withdrawal of the recognition of a traditional community;
- * regulating the issuing of certificates of recognition to identified traditional leaders, regents, persons acting as traditional leaders, and deputy traditional leaders;
- * publication of notices in the *Provincial Gazette* where a person has been recognised or appointed as a traditional leader, a deputy traditional leader, acting traditional leader or regent;
- * withdrawal of a certificate of recognition of a traditional leader;
- * establishment of district houses of traditional leaders;
- * a code of conduct to be adhered to by traditional leaders; and
- * a process to be followed in resolving disputes by traditional leaders.

7. PARLIAMENTARY PROCEDURE

The Department of Provincial and Local Government and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by subsection (1) or (2) of section 76 of the Constitution because it falls within a functional area listed in Schedule 4 to the Constitution (i.e. indigenous law and customary law, subject to Chapter 12 of the Constitution).