

***THE PROVINCE OF
GAUTENG***



***DIE PROVINSIE VAN
GAUTENG***

Provincial Gazette Provinsiale Koerant

EXTRAORDINARY • BUITENGEWOON

Selling price • Verkoopprys: **R2.50**
Other countries • Buitelands: **R3.25**

Vol: 27

PRETORIA
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8 JULIE 2022

No: 267

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ISSN 1682-4520



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Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
	GENERAL NOTICES • ALGEMENE KENNISGEWINGS		
894	Erratum Notice: Proclamation regarding the Appointment and Designation of Members of Gauteng Commission on Traditional Leadership Disputes and Claims	267	3

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

GENERAL NOTICE 894 OF 2022

GAUTENG PROVINCE
OFFICE OF THE PREMIER
REPUBLIC OF SOUTH AFRICA

ERRATUM NOTICE**IN RESPECT OF THE PROCLAMATION REGARDING THE APPOINTMENT AND DESIGNATION OF MEMBERS OF GAUTENG COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS**

Please note that the Schedule to the above-mentioned Proclamation that was promulgated by way of General Notice No. 1394 of 2021 that was published on the *Provincial Gazette, Extraordinary*, No. 393 dated 9 November 2021 is hereby corrected as follows:

The arrangement of pages for Part A and Part B of the Schedule to the Proclamation is as published in terms of this Notice.

The Office of the Premier: Gauteng Province would like to apologise for any inconvenience caused.

For further information regarding the Proclamation, please contact Mr Kiba Kekana, Department of Cooperative Governance and Traditional Affairs: Gauteng Province, at Kiba.Kekana@gauteng.gov.za.

PROVINCE OF GAUTENG

THE PREMIER**TRADITIONAL AND KHOI-SAN LEADERSHIP ACT, 2019
(ACT NO. 3 OF 2019)****GAUTENG TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2010
(ACT NO. 4 OF 2010)****GAUTENG PROVINCIAL COMMISSIONS ACT, 1997
(ACT NO. 1 OF 1997)****CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996****PROCLAMATION REGARDING THE APPOINTMENT AND DESIGNATION
OF MEMBERS OF GAUTENG COMMISSION ON TRADITIONAL
LEADERSHIP DISPUTES AND CLAIMS**

WHEREAS section 127(2)(e) of the Constitution of the Republic of South Africa, 1996, declares that the Premier is responsible for appointing commissions of inquiry in the Province;

AND WHEREAS section 2(1) read with sections 3 and 8 of the Gauteng Provincial Commissions Act, 1997 (Act No. 1 of 1997)—

- (a) empowers the Premier, by proclamation in the *Provincial Gazette*, to—
 - (i) appoint a commission of inquiry to conduct an investigation, receive evidence and deliberate on any matter of public importance;
 - (ii) determine the matter to be investigated by the commission as well as its terms of reference;
 - (iii) make regulations—
 - (aa) providing for the procedure to be followed at the investigation and for the preservation of confidentiality; and
 - (bb) providing generally for all matters which he or she considers necessary or expedient to prescribe for the purposes of the investigation;

- (iv) appoint a secretary for the commission, and such other officials as the Premier may deem necessary to assist the commission; and
- (v) designate any member of the commission as the chairperson of that commission; and
- (b) mandates the commission appointed pursuant to paragraph (a) to submit a written report to the Premier—
 - (i) not later than 12 months after its appointment; or
 - (ii) on such further period as may be granted by the Premier on the written request of the commission;

AND WHEREAS the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), in section 59 provides—

- (a) in subsection (1)(a) that section 59 applies to any traditional leadership dispute other than a dispute that was dealt with or is being dealt with by the Commission on Traditional Leadership Dispute and Claims ("CTLDC") established in terms of section 22 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) (the "Framework Act");
- (b) in subsection (1)(b) that—
 - (i) provincial legislation may provide for a mechanism to deal with traditional leadership disputes, excluding any dispute relating to a king, queen, kingship or queenship: Provided that such provincial legislation is not inconsistent with the section 59; and
 - (iii) notwithstanding the relevant provisions of provincial legislation contemplated above, the Premier may refer any dispute, including any report, recommendations and written comments by the relevant royal family or, where applicable, relevant traditional council, to the Minister for written comments and advice which must be submitted to the Premier within 60 days from the date of such referral;
- (c) in subsection (2) any traditional leadership dispute relating to a principal traditional leader, senior traditional leader, headman, headwoman, principal traditional community, traditional community, headmanship or headwomanship must be dealt with by the Premier, who must—
 - (i) cause an investigation to be conducted by an investigative committee designated by him which committee must—

- (aa) include at least one member of the relevant provincial house; and
 - (bb) provide a report as well as recommendations on the matter in dispute within 60 days from the date of designation of the investigative committee;
- (ii) refer the report to the relevant royal family or, where applicable, relevant traditional council for written comments which must be submitted to the Premier within 60 days from the date of such referral; and
- (d) in subsection (4) that the Premier, after having considered the report and recommendations of the investigative committee, written comments of the relevant royal family or traditional council and, where applicable, the written comments and advice of the national Minister responsible for traditional and Khoi-San leadership and governance matters, must take a decision on the matter in dispute and inform the parties to the dispute in writing of her or his decision;

AND RECOGNISING that the Gauteng Traditional Leadership and Governance Act, 2010 (Act No. 4 of 2010) (i.e. "provincial legislation"), precede the enactment of the Traditional and Khoi-San Leadership Act, 2019 (i.e. "national legislation"), which repealed and replaced the Framework Act;

AND ACKNOWLEDGING that the Gauteng Traditional Leadership and Governance Act, 2010, in section 62 provides as follows:

- (1) Whenever the MEC cannot through mediation resolve a dispute, claim or any other matter related to traditional leadership, the MEC, in consultation with the Premier and the Executive Council, may appoint a person or persons who are knowledgeable in traditional affairs to investigate the matter and make recommendations to the MEC;
- (2) The appointment contemplated in subsection (1) must be done by publishing a note in the *Provincial Gazette*.
- (3) When appointing the person or persons for the purposes of subsection (1), the MEC must—
 - (a) where more than one person is appointed, designate the chairperson of the inquiry;
 - (b) outline the terms of reference for the inquiry; and
 - (c) determine the timeframe for the completion of the investigation and submission of the recommendations.

- (d) the person or persons so appointed must determine the procedure to conduct the investigation;
- (4) The person or persons appointed in terms of subsection (1) must determine the procedure to conduct the investigation.
- (5) The provisions of the Gauteng Provincial Commissions Act, 1997, apply, with the necessary changes, to the person or persons appointed in terms of this section.
- (6) Upon receipt of the recommendations of the person or persons appointed to conduct an inquiry, the MEC must, after consultation with the Provincial House and in consultation with the Premier and the Executive Council, within 60 days, make a decision on the matter under investigation.
- (7) The commission established in terms of this section may not deal with any matter that falls within the ambit of the mandate of the National Commission (i.e. the "CTLDC") or until it ceases to exist.


AND CONFIRMING that, to the extent that the reference to the MEC is construed as a reference to the Premier in accordance with section 127(e) of the Constitution of the Republic of South Africa, 1996, and section 2 of the Gauteng Provincial Commissions Act, 1997, the relevant provisions of Gauteng Traditional Leadership and Governance Act, 2010 (i.e. "provincial legislation"), referred to above are consistent with section 59 of the Traditional and Khoi-San Leadership, 2019 (i.e. "national legislation");

NOW THEREFORE, I, Malemolla David Makhura, Premier, after consultation with the MEC for Human Settlements, Urban Planning and Cooperative Governance and Traditional Affairs in the Province, and pursuant to the decision of the Executive Council of 30 October 2019, hereby—

- (a) appoint a commission of inquiry, to be known as the Gauteng Commission on Traditional Leadership Disputes and Claims, in terms of section 127(2)(e) of the Constitution of the Republic of South Africa, 1996, read with section 2(1)(a) of the Gauteng Provincial Commissions Act, 1997, read with section 59 of the Traditional and Khoi-San Leadership Act, 2019, and section 62 of the Gauteng Traditional Leadership and Governance Act, 2010, the latter read with necessary changes required by the context as mentioned above;
- (b) for the above purpose, designate—

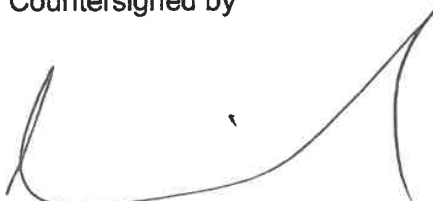
- (i) Professor Mziwoxolo Sirayi, Advocate Khavhareni Aarone Mahumani, Ms Pumla Primrose Madiba and Mr Uhuru Moila, as members of the Commission;
 - (ii) Professor Mziwoxolo Sirayi as the Chairperson of the Commission in accordance with section 2(1)(e) of the Gauteng Provincial Commissions Act, 1997, read with section 62(3)(a) of the Gauteng Traditional Leadership and Governance Act, 2010; and
 - (iii) Professor Mandla Mchunu, Associate Professor Elmien Du Plessis and Mr Johan Meiring as technical experts to assist the Commission in the performance of its functions;
- (c) define or outline the Terms of Reference of the Commission as set out in Part A of the Schedule to this Proclamation in terms of section 2(1)(b) of the Gauteng Provincial Commissions Act, 1997, read with section 62(3)(b) of the Gauteng Traditional Leadership and Governance Act, 2010; and
- (d) make the Regulations applicable to the Commission as set out in Part B of the Schedule in terms of section 2(1)(c) of the Gauteng Provincial Commissions Act, 1997.

Given under my Hand at Johannesburg this *10th* day of *October*, Two Thousand and Twenty-One.



MD MAKHURA, (MPL)
PREMIER

Countersigned by



LI MAILE, (MPL)
MEC FOR: HUMAN SETTLEMENTS, URBAN PLANNING AND
COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
Date: *21/10/21*

SCHEDULE

PART A

TERMS OF REFERENCE OF THE GAUTENG COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS

1. The Gauteng Commission on Traditional Leadership Disputes and Claims is hereby appointed in terms of section 127(2)(e) of the Constitution of the Republic of South Africa, 1996, read with section 2(1) of the Gauteng Provincial Commissions Act, 1997 (Act No. 1 of 1997), section 59 of the Traditional and Khoi-San Leadership Act, 2019, (Act No. 3 of 2019) and section 62 of the Gauteng Traditional Leadership and Governance Act, 2010 (Act No. 4 of 2010), the latter read with necessary changes required by the context, as well as these Terms of Reference, generally, to conduct an investigation into and to provide a report as well as recommendations to me on the following matters:
 - (a) a case where there is a doubt as to whether a traditional leadership or headmanship or headwomanship, excluding a king or a queen or a kingship or a queenship, was established in accordance with customary law and customs within the Province;
 - (b) a traditional leadership position where the title or right of the incumbent is contested;
 - (c) claims by communities to be recognised as traditional communities;
 - (d) the legitimacy of the establishment or disestablishment of "tribes" within the Province;
 - (e) disputes resulting from the determination of traditional authority boundaries and the merging or division of "tribes"; and
 - (f) where reasonable grounds exist, any other matter relevant to the matters listed in paragraphs (a) to (e), including the consideration of events that may have arisen following the outcome of the "Tolo Commission".
2. The Commission is appointed for a term of office of 12 months and must commence with its investigative work by no later than Monday, 1 November 2021. It must conclude the investigation and provide a final written report and recommendations to me through the MEC for Human Settlements, Urban Planning and Cooperative Governance and Traditional Affairs by no later than Monday, 31 October 2022.
3. Despite paragraph 2 above, the Commission must—
 - (a) conduct an investigation on each dispute, claim or matter;

- (b) receive and analyse evidence;
 - (c) conduct research;
 - (d) deliberate; and
 - (e) within 60 days of receipt or referral of each dispute, claim or matter, provide a written report as well as recommendations to me through the MEC for Human Settlements, Urban Planning and Co-operative Governance and Traditional Affairs.
4. The provisions of the Gauteng Provincial Commissions Act, 1997, are applicable to the Commission, subject to such amendments or exemptions as may be specified by the Premier by proclamation in the *Provincial Gazette*.
5. The Commission may, in accordance with section 10 of the Gauteng Provincial Commissions Act, 1997, read with section 62 of the Gauteng Traditional Leadership and Governance Act, 2010, determine rules for its own guidance on the conduct and management of its proceedings.
6. All organs of State and departments are required to assist and co-operate fully with the Commission.
7. Any person or section of the public, including traditional community and leadership structures, members of relevant communities and of the public, who or which is in possession of information which may be relevant to the matters to be enquired into by the Commission and wishes to give evidence before the Commission is invited to contact the Chairperson of the Commission, or officer appointed to assist the Commission and designated by the Chairperson, to arrange the date and time when it may testify before the Commission.
8. The Commission may, where appropriate, refer any matter regarding the conduct of any person for prosecution or further investigation to the appropriate agency department or body.
9. The Gauteng Department of Cooperative Governance and Traditional Affairs, in accordance with section 11 of the Gauteng Provincial Commissions Act, 1997, read with section 55 of the Traditional and Khoi-San Leadership Act, 2019, must—
- (a) provide administrative and financial support to the Commission so as to enable the Commission to perform all the functions assigned to the Commission. This includes—

- (i) the remuneration, allowances and transport expenses of the Chairperson, other members of the Commission, technical experts and other personnel involved in the Commission; and
 - (ii) related expenses, disbursements and costs, including costs associated with the hiring of venues for and the recording and transcription of the hearings; and
 - (b) second or designate officials from the Department for this purpose, including but not limited to, conduct research and secretariat work to the Commission.
10. The venue and dates on which the sittings of the Commission will be held will be determined by the Chairperson of the Commission.
11. These Terms of Reference may be added to, varied or amended from time to time by the Premier.

PART B**REGULATIONS APPLICABLE TO THE GAUTENG COMMISSION ON TRADITIONAL LEADERSHIP DISPUTES AND CLAIMS**

1. In these Regulations, unless the context otherwise indicates—
"Chairperson" means the Chairperson of the Commission;
"Commission" means the Gauteng Commission on Traditional Leadership Disputes and Claims;
"document" means any book, pamphlet, record, list, circular, plan, placard, poster, publication, drawing, photograph or picture, in any format that is capable of being read;
"enquiry" means the enquiry conducted by the Commission;
"member" means a member of the Commission;
"officer" means a person in the full-time service of the Gauteng Provincial Government or State who has been seconded or designated to assist the Commission in the performance of its functions; and
"premises" includes any land, building, structure, part of a building or structure, vehicle, conveyance, vessel or aircraft.
2. The proceedings of the Commission must be recorded and transcribed in the manner determined by the Chairperson.
3. (1) Any person appointed or designated to take down or record the proceedings of the Commission in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded must, at the outset, take an oath or make an affirmation in the following form:

"I, AB, declare under oath / affirm and declare—

(a) that I shall faithfully and to the best of my ability take down / record the proceedings of the Commission of Inquiry into Traditional Leadership Disputes and Claims in the Province of Gauteng in shorthand / by mechanical means as ordered by the Chairperson of the Commission; and

(b) that I shall transcribe fully and to the best of my ability any shorthand notes / mechanical record of the proceedings of the said Commission made by me or by any other person."

(2) No shorthand notes or mechanical record of the proceedings of the Commission may be transcribed except by order of the Chairperson.
4. Any person employed in the execution of the functions of the Commission, including any person referred to in regulation 3(1), must assist to preserve secrecy with regard to any matter or information that may come to his or her knowledge in the performance of his or her

duties in connection with the said functions except, insofar as the publication of such matter or information is necessary for the purposes of the report of the Commission, and every such person, except the Chairperson, any member or any officer, must, before performing any duty in connection with the Commission, take and subscribe before the Chairperson an oath of fidelity and secrecy in the following form:

"I, AB, declare under oath / affirm and declare that except insofar as it is necessary in the performance of my duties in connection with the functions of the Commission of Inquiry into Traditional Leadership Disputes and Claims in the Province of Gauteng or by order of a competent court, I shall not communicate to any person any matter of information which may come to my knowledge in connection with the inquiry of the said Commission, or allow or permit any person to have access to any records of the Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any officer".

5. No person may communicate to any other person any matter or information which may have come to his or her knowledge in connection with the enquiry of the Commission, or allow or permit any other person to have access to any records of the Commission, except insofar as it is necessary in the performance of his or her duties in connection with the functions of the Commission or by order of a competent court.
6. The Chairperson may designate one or more knowledgeable persons to assist the Commission in the performance of its functions, in a capacity other than that of a member.
7. The Chairperson or an officer generally or specially authorised thereto by the Chairperson must administer an oath to, or accept an affirmation from, any witness appearing before the Commission.
8. Subject to the provisions of regulation 9, any proceedings of the Commission must, in accordance with section 3(2) of the Gauteng Provincial Commissions Act, 1997, be open to the public.
9. The Commission may direct that the public or any member thereof not attend any proceedings of the Commission or any portion thereof, where this is justified in the interests of—
 - (a) the conduct of the proceedings or the consideration of the matter in question;
 - (b) the protection of the privacy of any person or of the confidentiality of any information relating to that person warrants the hearing to be conducted in-camera;

- (c) the proper conduct of the hearing requires it; or
 - (d) any other reason that would be justifiable in civil proceedings in a High Court.
10. Where, at the time of any person giving evidence before the Commission, members of the general public are, or have been, excluded from attendance at the proceedings of the Commission, the Chairperson may, at the request of such a person, direct that no person may disclose in any manner whatsoever the name or address of such person or any information likely to reveal his or her identity.
 11. A witness appearing before the Commission may be cross-examined by a person only if the Chairperson permits such cross-examination by such person because the Chairperson deems it necessary in the interest of the functions of the Commission.
 12. A witness appearing before the Commission may, in the discretion of the Chairperson and in such manner as may be determined by the Chairperson, be assisted by an advocate or an attorney.
 13. An officer, attorney or advocate designated thereto by the Chairperson may be present at the hearing of evidence at the inquiry and may adduce evidence and arguments relating to the enquiry.
 14. Whenever the Commission is satisfied upon evidence or information presented to it that the Commission's enquiry may adversely affect any existing, instituted or pending legal proceedings or any investigation instituted in terms of any law, evidence which is relevant to such legal proceedings or investigation must be dealt with by the Commission in such a manner as not to adversely affect such legal proceedings or investigation.
 15. The Chairperson, or any member or any officer may, with a warrant, for the purposes of the enquiry, at all reasonable times enter and inspect any premises and demand and seize any document which is on such premises.
 16. No person may, without the written permission of the Chairperson—
 - (a) disseminate any document submitted to the Commission by any person in connection with the enquiry or publish the contents or any portion of the contents of such document; or
 - (b) peruse any document, including any statement, which is destined to be submitted to the Chairperson or intercept such document while it is being taken or forwarded to the Chairperson.

17. No person may, except insofar as is necessary in the execution of the Terms of Reference of the Commission, publish or furnish any other person with the report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission for publication: Provided that the Premier may authorise publication of any such report or part thereof.
18. No person may insult, disparage or belittle the Chairperson or any member of the Commission or prejudice the proceedings or findings of the Commission.
19. Any person who—
 - (a) wilfully hinders, resists or obstructs the Chairperson, any member or any officer in the exercise of any power contemplated in regulation 15; or
 - (b) contravenes a provision of regulation 5, 10, 16, 17 or 18, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months, or both such fine and imprisonment.

Printed by the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001,
for the **Gauteng Provincial Administration**, Johannesburg.

Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

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