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THE PRESIDENCY

No. 1838 19 December 2003

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 Act, 2003.

IHHOVISI LIKAMONGAMELI

Ino. 1838 19 December 2003

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzo-shicilelwa umphakathi:—

Ino. 41 ka-2003: Uhlaka Lomthetho-sivivinywa waBaholi Bandabuko Nokuphatha ka-2003.



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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 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.

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

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

UMTHETHO

Ukuhlinzekela ukugunyazwa ngokusemthethweni kwemiphakathi esabuswa ngokwendabuko; ukuhlinzekela ukusungulwa nokugunyazwa kwemikhandlu yendabuko; ukuhlinzekela imisebenzi namaqhaza abaholi bendabuko; ukuhlinzekela ukwakhiwa kohlaka olusemthethweni lwezikhundla ezinhlakeni zobuholi bendabuko; ukugunyazwa kanye nokususwa kwabaholi bendabuko ezikhundleni; ukuhlinzeka kwezindlu zobuholi bendabuko; ukuhlinzekela uhlelo lokuxazululwa kwemibango yobuholi bendabuko kanye nokusungulwa kweKhomishana yokuxazululwa kwemibango yobuholi bendabuko; kanye nezinye izindaba eziphathelene nobuholi bendabuko.

ISANDULELA

NJENGOBA uHulumeni ngokoMthethosisekelo efuna—

- Ukwakha uhlaka lukazwelonke kanye nezimiso ezizocacisa ngendawo neqhaza lobuholi bendabuko kuhlelo olusha lokubusa ngokwentando yeningi;
- Ukuguqula izinhlaka zobuholi bendabuko zihambisane nezimiso zomthetho sisekelo; futhi
- ukubuyiswa kwesithunzi kanye nokubasemthethweni kwezinhlaka zobuholi bendabuko kuhambisana nemithetho yamasiko nendabuko kanye nendlela yesintu;

NJENGOBA abantu bomdabu base Ningizimu Afrika beyimiphakathi enamasiko ahluhahlukene;

NJENGOBA uMthethosisekelo ugunyaza lokhu—

- izinhlaka, izikhundla neqhaza lobuholi bendabuko ngokomthetho wamasiko nendabuko; kanye
- nomkhandlu wendabuko osaphila ngokulandela indlela yomthetho wamasiko endabuko;

NJENGOBA—

- Uhulumeni kufuze abuhloniphe, abugqugquzele futhi abuvikele ubuholi bendabuko khona buzohambisana nentando yeningi eningizimu neAfrika;
- Uhulumeni uyasibona isidingo segunya lokusiza kanye nokuxhasa lobuholi bendabuko;
- izinhlaka zobuholi bendabuko maziguqulwe zenziwe ukuthi zihambisane noMthethosisekelo kanye naMalungelo oLuntu ukuze—
 - kuphakanyiswe umbuso wentando yeningi nezinhlelo zomphakathi obusa ngokuvulekile; kanye
 - nokugqugquzela ukulingana nokungacwasi ngobulili kuzinhlaka zobuholi bendabuko; kanye

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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,

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

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- Izinhlaka zobuholi bendabuko zifuze—
 - ukugquqguzela inkululeko, ukuhlonipheka komuntu, ukugcizelela ukulingana nokungacwasi ngobulili;
 - ukuthola igunya kanye nesisekelo samandla okuphatha komthetho wamasiko nendabuko kanye nenqubo;
 - ukuphokophelela ukukhuthaza indlela yendabuko yokuphila kanye namasiko;
 - zithuthukise umoya wobumbano kanye nokwakhiwa kwesizwe kanye nokuthula kubantu;
 - ziqgugquzele imigomo yokuphatha ngokuhlanganyela nazo zonke izigaba zikahulumeni kanye nezinye izingxenye zakhe; futhi
 - zikhuthaze ukusebenza ngokwethembeka kanye nohlelo lokuxazulula imibango olungachemile, kanye nokuphatha ngendlela njengokubalula kwemithetho eqondene nakho,

Njengoba kushicilelwa yiPhalamende lase Ningizimu Afrika kanje:—

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Izigaba

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- 10 2. Ukugunyazwa kwemiphakathi yendabuko
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 4. Imisebenzi yemikhandlu yendabuko
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 15 7. Ukuhoxiswa kwegunya lemiphakathi yendabuko

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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 35
in section 27, if in existence;
“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 40
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 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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5 17. Izindlu zabaholi bendabuko basekhaya
18. Ukuthunyelwa kwemithethosivivinywa kwindlu yabaholi Bendabako kaZwelonke

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- 10 19. Imisebenzi yabaholi bendabuko
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25 29. Ukuchibiyelwa koMthetho "Act 20 of 1998", njengoba uchibiyelwa nguMthetho "Act 21 of 2000"
30. Isihloko esifingqiwe nokuqala kokusebenza koMthetho

ISAPHLUKO 1**Izincazelo kanye nokusetshenziswa komthetho**

- 30 1. (1) KuloMthetho ngaphandle uma ingqikithi isho okunye—
"ibamba" kusho umuntu obambele lowo ofanele ukuthatha isikhundla kodwa ngoba esemncane angeke akwazi ukuthatha isikhundla sakhe. Ubamba isikhundla okwesikhashana kuze kukhule lowo ofanele ukuthatha isikhundla njengokulandisa kwesigaba 13(4);
35 "iKhomishane" kusho ukusungulwa kweKhomishane ngokwesigaba 22;
"indawo eyengamelwe" isho indawo eyengamelwe umphakathi wendabuko kanye nomkhandlu wendabuko njengalokhu kucaciswe kwesigaba 2 no 3;
"iNduna" kusho umholi wendabuko uma—
40 (a) ewumuntu owengamele indawo ethile futhi njengokulandisa komthetho wamasiko wendabuko o engaphansi iNkosi; futhi
(b) enegunya njengokucacisa kwaloMthetho;
"inkosi" kusho umholi wendabuko owengamele indawo ethile yomphakathi wendabuko futhi ibe nezinduna eziphetho kwizigodi ezahlukeno ngaphansi kwakhe njengokulandisa koMthetho waMasiko neNdabuko;
45 "iSilo noma iNdlovukazi" kusho umholi wendabuko—
(a) umnikazi wezwe noma kundawo ayengamele kukhona abaholi bendabuko angaphansi kwakhe anamandla okuphatha abawagunyazwa uMthetho waMasiko wendabuko; futhi

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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) begunyazwa umthetho ocacisa lokhu;
 “**ubuduna**” kusho isikhundla esiphethwe ngumholi wendabuko;
 “**ubuholi bendabuko**” kusho ubuholi noma isakhiwe nendlela yokuphatha
 esetshenziswa noma elandelwa imiphakathi yendabuko;
 5 “**ubuholi bendabuko**” kusho isikhundla isikhundla esiphethwe inkosi;
 “**indlu yabaholi bendabuko besifundazwe**” kusho indlu yabaholi bendabuko
 besifundazwe njengo kucacisiwe kwisigaba 16(a);
 “**iNdlu yabaholi bendabuko basekhaya**” kusho indlu yabaholi basekhaya
 njongoba kuhlinzekwa kusigaba 16(b);
 10 “**ubukhosi**” kusho isikhundla esiphethwe iSilo noma iNdllovukazi;
 “**uhlanga lwesizwe**” kushiwo uhlanga lwesizwe olwasungulwa noma
 olwagunyazwa ngaphansi komthetho owawusebenza ngalesosithathi kungakaqali
 ukusetshenziswa kwalomthetho;
 15 “**ukuziphatha kwabaholi bendabuko**” kusho ukuziphatha kwabaholi njengoba
 kuquKethewe ku “Schedule” futhi mayelana nesifundazive kuqondiswe
 kumgomo wokuziphatha wesifundazo njengoba kucaciswa kusigaba 27, uma
 ukhona lowomgomo;
 “**umasipala wasedolobheni elikhulu**” kusho umasipala wasedolobheni elikhulu
 njengokucacisa kwesigaba 1 soMthetho kaHulumeni wase Makhaya: Kwizakhiwo
 20 zoMasipala ka, 1998 (Umthetho No. 117 ka 1998);
 “**umasipala wesifunda**” kushiwo umasipala wesifunda njengoba echaziwe
 kwisigaba 1 soMthetho woHulumeni baseMakhaya: Izakhiwo zoMasipala, 1998
 (uMthetho No. 117 Ka 1998);
 25 “**izinhlaka noma izakhiwo zesintu**” kuqondiswe kulezonhlaka noma izakhiwo
 ezisungulwe ngokulandela umthetho wamasiko nendabuko;
 “**umholi wendabuko**” kusho noma ngabe ubani ngokomthetho wamasiko
 nendabuko ophethe isikhundla futhi owamukelekile ngokwalomthetho;
 “**umkhandlu wendabuko**” kusho umkhandlu wendabuko owakhiwe
 ngokwesigaba 3;
 30 “**umndeni wasendlunkulu**” kushiwo isakhiwo esiwumsuka sendabuko noma
 izakhiwo sozalo somndeni lowo obusayo kumphakathi wendabuko owaziwayo
 ngokomlando wesintu futhi uhlanganisa neminye imindeni obusayo;
 “**umphakathi wendabuko**” kusho isizwe noma umphakathi osabusa
 ngokwamasiko njengokucacisa kwesigaba 2;
 35 “**uNgqongqoshe**” kusho uNgqongqoshe obhekele izindaba zobuholi bendabuko.
 (2) Akukho kulomthetho okungahunyushwa njengokuvimbela noma ngabe umuphi
 umphakathi ekuhlonipheni umholi wendabuko ngokwesikhundla sakhe emphakathini
 futhi kungabi igama elijivazayo noma ukuthasiswa kwesikhundla, iqhaza kanye
 nemisebenzi yomholi wendabuko ebhalwe phansi emthethweni
 40 (3) Abaholi bendabuko bangamukela noma bagunyaze amazinga ahlukeni
 ezikhundla ngokulandela amasiko, okuqukethwe kwisigatshana (1) makungahu-
 nyushwa njengokwengeza noma ukufinyezwa kwesikhundla.

ISIAHLUKO 2

IMIPHAKATHI YENDABUKO KANYE NEMIKHANDLU YENDABUKO

45 Ukugunyazwa kwemiphakathi yendabuko

2. (1) Umphakathi wendabuko uyogunyazwa ngokusemthethweni uma—
 (a) uncike kwindlela yobubuholi bendabuko balowo mphakathi; futhi
 (b) ulandela inqubo yohlelo lomthetho wamasiko nendabuko.
 (2) (a) uNdunankulu wesifundazwe kumele afake isaziso kuSomqulu kaHulumeni
 50 wesifundazwe ngokuhambisana nemithetho yesifundazwe emva kokubonisana nendlu
 yabaholi bendabuko yesifundazwe kanye nomphakathi lowo othintekayo, kanye neSilo
 noma iNdllovukazi eyengamele lowomphakathi, bagunyaze umphakathi lowo
 njengokucacisa kwesigatshana (1) njengomphakathi wendabuko.

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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 35

4. (1) A traditional council has the following functions:

- (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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(b) Umthetho wesifundazwe okukhulunywa ngawo kwisigatshana (a) kumele—

- (i) uhlinzekele isimo esizovumela ukubonisana okwanele kanye nomphakathi lowo othintekayo; kanye
5 (ii) nokunquma isikhathi okufanele ukuba uNdunankulu wesifunda lesi afinyelele kuso esizogunyaza lomphakathi njengomphakathi wendabuko njengoba kumiswe kwisigatshana (1).

(3) Umphakathi wendabuko kumele uguquke khona uzohambisana nendlela yesintu kanye namasiko nendabuko kanye nemigomo yamaLungelo eSintu ekuMthethosisekelo ngoku—

- 10 (a) nqanda ukuxwasana;
(b) igqugquzela ukulingana; kanye
(c) nokufuna ukuphuhlisa ukugcwalisa izikhundla zobuholi bendabuko okungacwasi ngobulili.

Ukusungulwa nokugunyazwa kwemikhandlu yendabuko

15 3. (1) Uma uNdunankulu ewugunyazile umphakathi wendabuko, Lowomphakathi wendabuko kumele usungule umkhandlu wendabuko ngokulandela imigomo ebhalwe phansi kumthetho wesifundazwe.

(2) (a) Umkhandlu wendabuko ungaba namalunga angeqile ku 30, kuye ngezindingo zalowomphakathi wendabuko othintekayo.

20 (b) Ingxenywe yokuthathu yalomkhandlu wendabuko kufanele kube abesifazane
(c) Amalungo omkhandlu wendabuko kufanele —

- (i) kube abaholi bendabuko kanye namalungo omphakathi wendabuko lowo okhethwe iNkosi ngokulandela imigomo yamasiko alowomphakathi ngokuhambisana nesidingo esiqukethlwe kwibinzama (b); kanye
25 (ii) namanye amalungo omphakathi wendabuko lowo akhethwe ngokomthetho ukuba sezikhundleni iminyaka emihlanu, okufanele enze 40% yamalunga omkhandlu wendabuko.

(d) Lapho kubonakala khona ukuthi inani labesifazane alanele ukuba semkhandlwini wendabuko, uNdunankulu wesifundazwe lesi, ngokulandela umthetho omisiwe
30 wesifundazwe, angagunyaza inani eliphansi kunalelo elidingekayo njengokucacisa kwebinzana (b).

Imisebenzi yemikhandlu yendabuko

4. (1) Umkhandlu wendabuko wenza lemisebenzi elandelayo:

- 35 (a) Ukuphatha kwezindaba zomphakathi wendabuko ngendlela yesintu nendabuko
(b) Ukulekelela nokusekela nokweluleka abaholi bendabuko ekwenzeni imisebenzi yabo
(c) Ukulekelela umasipala ekutholeni izidingo nqangi zomphakathi.
40 (d) Ukulekelela ngokumbandakanya komphakathi wendabuko ezinhlelweni zentuthuko ngokuchibiyela izinhlelo zentuthuko ezihlanganyelwe zikamasipala lapho lomphakathi uhlala khona.
(e) Ukuphakamisa emva kokubonisana nendlela yasekhaya kanye neyabaholi bendabuko yesifundazwe, imibono kuhulumeni engenza kangcono uhlelo lwezentuthuko kanye nokulethwa kwezidingo nqangi kwizindawo ezengamelwe imikhandlu yendabuko
45 (f) Ukuzibandakanya ekwakhiweni kwemigomo kanye nemithetho ezingeni lasemakhaya
(g) Ukuzibandakanya nezinhlelo zikamasipala, uhulumeni kazwelonke nowesifundazwe ezinhlelweni zentuthuko
50 (h) Ukugqugquzela uhlelo lokuphatha ngokuhlanganyele uhlelo lwentuthuko oluhlanganyele lwezidingo nqangi
(i) Ukugqugquzela ukusetshenziswa kolwazi lwendabuko ezinhlelweni zentuthuko kanye nokuqandwa kwenhlekelele
55 (j) Uxwayise umasipala ngobuthi noma isehlakalo esenzekayo kwindawo enganyelwe umkhandlu wendabuko, noma ukuphepha kwabantu abahlala kuleyo ndawo

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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— 5
- (a) keep proper records;
 - (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 partnerships between municipalities and traditional councils through legislative or other measures. 20
- (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 as provided for in section 2, may only be considered where— 35
- (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 in terms of applicable legislation; or 40
 - (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 must be done by the Premier of a province in accordance with applicable provincial legislation. 45
- (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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- (k) Ukwabelana ngolwazi nokusebenzisana kwemikhandlu yendabuko; kanye
 (l) Nokwenza imisebenzi eshiwo umthetho wamasiko nendabuko, eyesintu, esemthethweni ehambisana nomthethosisekelo.
- (2) Umthetho wesifundazwe kufanele wengamele ukwenziwa kwalemisebenzi
 5 womkhandlu wendabuko ngokufuna lokhu okulandelayo kuwona—
 (a) ukugcina amabhuku ngendlela efanele;
 (b) ukuhlola amabhuku noma izitatimende zezimali;
 (c) ukuveza zonke izipho abaziphiwe; kanye
 (d) nokuhambisana nemigomo ebekiwe yokuziphatha.
- 10 (3) Umkhandlu wendabuko kufanele—
 (a) usebenzisane namakomiti ezigceme asungulwe ngaphansi kwesigatshana 73 somthetho we Local Government: “Municipal Structures Act, 1998 (Act No. 117 of 1998)”; kanye
 (b) ubambe umhlangano kanye nomphakathi wendabuko okungenani kanye
 15 ngonyaka ukuze uchaze ngezinto ozenzile, izimali kanye neminikelo yezimali eqoqiwe.
- (4) Izinto ezabelwe umkhandlu wendabuko ukuba uzisebenzise, mazinga-setshenziswa ukugqugquzela noma ukudicilele phansi iqembu lezombangazwe.

Ubudlelwano phakathi Komasipala nemikhandlu yendabuko

- 20 5. (1) UHulumeni kazwelonke nowezifundazwe kumele ugqugquzele ubudlelwano phakathi komasipala nemikhandlu yendabuko ngoku shaya umithetho yokuqinisekisa ukuthi lokhu kuyenzeka.
 (2) Ubudlelwane phakathi kukamasipala nomkhandlu wendabuko kumele—
 (a) balawule imigomo yokuhloniphana nxazonke nokugunyazwa kwezikhundla
 25 namaqhaza abo bonke abayingxenywe; futhi
 (b) baqondiswe imigomo yokuphatha ngokubambisana.
 (3) Umkhandlu wendabuko ungaba nesivumelwano nomasipala sokuletha izidingo nqangi njenga lokhu kugunyazwa umthetho “Municipal Systems Act, 2000 (Act No. 32 of 2000)” kanye neminye imithetho esetshenziswayo.

30 Ukwelekelelwa kwemikhandlu yendabuko

6. UHulumeni kaZwelonke kanye nohulumeni wesifunda bangashaya umthetho noma benze izidingo ezizoxhasa futhiqinise imikhandlu yendabuko kuzifundazwe ukuze zikwazi ukwenza imisebenzi yazo.

Ukuhoxiswa kwegunya lwemiphakathi yendabuko

- 35 7. (1) Ukuhoxiswa kwegunya njengomphakathi wendabuko njengoba-kuhlinzekwa kwesigaba 2, kungalandelwa uma—
 (a) umphakathi lowo ucela uNdunankulu wesifunda ukuba igunya lawo lihoxiswe;
 (b) uhulumeni wesifundazwe leso ecelwa ukuba abuyekeze isimo semiphakathi
 40 eyayihlukanisiwe noma eyayihlanganisiwe ngaphambi kuka 1994 ngokwemiyalo yemithetho eyayisentshenziswa;
 (c) uma imiphakathi emibili noma engaphezulu icela uNdunankulu wesifundazwe ukuba ayihlanganise njengomphakathi wendabuko owodwa.
- (2) (a) Ukuhoxiswa kwegunya lomphakathi njengomphakathi wendabuko kumelwe
 45 kwenziwe uNdunankulu wesifundazwe ngokulandela umthetho wesifundazwe.
 (b) Umthetho wesifundazwe ophawulwa kwibinzana (a) kumele ukuba—
 (i) uhlinzekele ukuhoxiswa kwegunya lomkhandlu wendabuko kanye
 nokuhoxiswa kwegunya lomphakathi wendabuko njengoba kulandiswa
 kwibinzana (a); futhi
 50 (ii) uhlinzekele ukubonisana phakathi kuka Ndunankulu nendlu yomkhandlu wendabuko yesifundazwe kanye nabaholi bendabuko; nomphakathi othintekayo, uma lowomphakathi uwela ngaphansi kweSilo noma seNdlovukazi ngaphambi kokuhoxiswa kwegunya lomphakathi wendabuko, ngokushicilela kusoMqulu kaHulumeni.

(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) UNdunankulu wesifundazwe kufanele, abhekele igunya lemiphakathi yendabuko njengocacisa kwesigaba sibili, noma imiphakathi ehlanganisiwe lapho ukuhlolwa kokuhlukanisa noma kokuhlanganisa imiphakathi njengokulandisa kwesigatshana (1)(b) itshengisa ukuba lomphakathi wendabuko obunjiwe kufanele ugunyazwe.

5

ISAHLUKO 3

IZIKHUNDLA EZINHLAKENI ZOBUHOLI BENDABUKO

Ukugunyazwa kwezikhundla zobuholi bendabuko

8. Nazi izikhundla ezigunyaziwe kwizinhlaka zobuholi bendabuko;

- 10 (a) isikhundla seSilo/seNdlovukazi;
(b) ubukhosi; kanye
(c) nobuduna

Ukugunyazwa kweZilo noma kweZindlovukazi

9. (1) Uma kufanele kubekwe iNdlovukazi noma iSilo, kufanele kulandelwe lenqubo:

- 15 (a) Umndeni wase Ndlunkulu ngesikhathi esingengakanani emva kwesidingo sokugcwalisa isikhundla se Ndlovukazi noma seSilo ngokulandela izimiso zomthetho wamasiko nendabuko—
- (i) baqoke umuntu okufanele ukuba iNdlovukazi noma iSilo emva kokubheka ukuthi imibandela elandiswa kuisigaba (10)(1)(a), (b) kanye no (d) yalandelwe maqondana nalowomuntu, kanye
- 20 (ii) ngokweziphakamiso zesiko —
- (aa) kwaziswe uMongameli, uNdunankulu wesifundazwe kanye noNgqongqoshe, ngemininingwane yomuntu oqokiwe ukuthatha isikhundla seNdlovukazi noma seSilo;
- 25 (bb) nokwazisa uMongameli ngezizathu zokuqokwa kwelunga lelo kusikhundla seNdlovukazi noma seSilo; kanye
- (cc) nokwethulwa kwesiqiniseko esibhalwe phansi kuMongameli ukuthi uNdunankulu kanye noNgqongqoshe bazisiwe ngendlela efanele; kanye
- 30 (b) ngokwesigatshana (3), uMongameli kufanele amugunyaze umuntu oqokwe ngokulandisa kwebinzana (a)(i) njenge Ndlovukazi noma iSilo, ngokulandela ukuthi —
- (i) kunesidingo sokuba amalungelo anikwa iNdlovukazi noma iSilo afane kumbuso kazwelonke;
- (ii) noma amagunya obuholi—
- 35 (aa) ahlanganisa izindawo zamakhosi asezingeni eliphezulu awela ngaphansi kuboholi baleyo Ndlovukazi noma leso Silo;
- (bb) nokuthi iNdlovukazi noma iSilo leso sigunyazwa imithetho yendabuko njengomholi wendabuko osezingeni eledlula lenkosi njengokulandisa kwibinzana (aa); kuthi lapho
- 40 (cc) iNdlovukazi noma iSilo sinohlaka lwendabuka ulumela imikhandlu yendabuko kanye namakhosi asezingeni eliphezulu awela ngaphansi kwe Ndlovukazi noma iSilo; kanye
- (iii) nemisebenzi ezokwenziwaiNdlovukazi noma iSilo.
- (2) Ngokwesigatshana (1)(b) ukugunyazwa komuntu ukuba abe iNdlovukazi noma
- 45 iSilo, kumele kwenziwe ngoku —
- (a) ngokushicilela isaziso kuSomqulu KaHulumeni esigunyaza ilunga lelo eliqokwe njenge Ndlovukazi noma iSilo; kanye
- (b) nokukhishwa kwesitifiketi sokugunyazwa kwelunga eliqokiwe.

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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.

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- (3) Uma kunobufakazi noma isikhalazo sokuthi umuntu oqokiwe ngokulandisa kwesigatshana (1) akwenzekanga ngezimiso zomthetho wamasiko nendabuko, uMongameli —
- (a) angaludlulisela udaba kwindlu yoBuholi Bendabuko kaZwelonke ukuze yenze iziphakamiso; noma
- (b) anganqaba ukukhipha isitifiketi sokugunyaza; noma
- (c) udaba angalubuyisela emuva emndenini wase Ndlunkulu uma kunesidingo sokuthi baphinde balucubungule noma beze nesisombululo, uma isitifiketi sokugunyaza singakhishwanga.
- (4) Uma udaba lubuyiselwe emuva kumndenini wase Ndlunkulu njengokulandisa kwesigatshana (3) maqondana nokubuyekwezwa kanye neziphakamiso, selusombululiwe, uMongameli kumele agunyaze umuntu oqokwe umndenini wase Ndlunkulu uma uMongameli eneliseka ukuthi iziphakamiso ezithathiwe kanye nokubuyekwezwa kwesinqumo esithathiwe wumndenini wase Ndlunkulu kwenziwe ngokulandela umthetho wamasiko nendabuko.
- (5) (a) uMongameli angashicilela kuSomqulu kaHulumeni noma ashaye imithetho mayelana—
- (i) neqhaza elibanjwa iSilo noma yiNdlovukazi kwimigidi iqesintu;
- (ii) nezimiso okumele zithatshathwe iSilo noma yiNdlovukazi ekwakheni isizwe; kanye
- (iii) neminye imisebenzi noma indima edlalwa ikhathulwe iSilo noma yeNdlovukazi.
- (b) Imithetho eshaywe ngaphansi kwebinza (a) kufanele yendlalelwe iPhalamende emva kokushicilelwa kwayo kuSonqulu kuHulumeni.

25 Ukususwa kweZilo noma kweZindlovukazi esikhundleni

10. (1) iNdlovukazi noma iSilo singasuswa esikhundleni ngaphansi kwalemibandela—
- (a) lapho ilahlwe khona yicala yanikwa isigwebo sokubhadla ejele izinyanga ezingaphezulu 12 ngaphandle kwenhlawulo;
- (b) ukugula ngokomzimba noma ukufiphazeka kwenqondlo kuhambisana nencwadi eyamukelekile yezokwelapha, okwenza kubenzima ukuthi iNdlovukazi noma iSilo siqhube umsebenzi waso;
- (c) ukuqoka noma ukugunyaza okungalungile; noma
- (d) ukwaphula umgomo noma umthetho wendabuko ogunyaza ukususwa esikhundleni.
- (2) Uma lemibandela elandiswa kwisigatshana (1)(a), (b) kanye no (d) ifinyelela emndenini wase Ndlunkulu, lapho umndenini wase Ndlunkulu uqoka ukususa esikhundleni iNdlovukazi noma iSilo, kufanele ukuba umndenini wase Ndlunkulu esikhathini esingekakanani nangokulandela izinhlaka zendabuko—
- (a) wazise uMongameli, uNdanankulu wesifundazwe leso kanye noNgqongqoshe, ngemininingwane yeNdlovukazi noma eye Silo leso okumela ukuba sisuswe esikhundleni;
- (b) kwethulwe nezizathu zokususwa esikhundleni; kanye
- (c) nokunika isiqiniseko esibhalwe phansi kuMongameli ukuthi uNdanankulu wesifundazwe leso kanye noNgqongqoshe bazisiwe ngendlela yakhona.
- (3) Uma kukhethwe ukuba iNdlovukazi noma iSilo sisuswe esikhundleni ngokulandisa kwesigatshana (2), uMongameli kufanele ukuba—
- (a) ahoxise isitifiketi segunya kusukela kumhla wosuku lokususwa kwakhe;
- (b) kushicilelwe isaziso esineminingwane yeNdlovukazi noma yeiSilo esisusiwe esikhundleni kuSomqulu kaHulumeni; kanye
- (c) nokwazisa umndenini wase Ndlunkulu othintekayo, kanye nayo iNdlovukazi noma iSilo esisuswe esikhundleni.
- (4) Uma iNdlovukazi noma iSilo sisuswa esikhundleni, lowo oqokelwe lesisikhundla kumele angene esikhundleni ngokwemigomo yendabuko aqhube imisebenzi yalesikhundla ngokulandela izimiso zesigaba 9.

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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.

Ingxenye 3: Amakhosi, amaduna**Ukugunyazwa kwaMakhosi kanye nezinduna**

11. (1) Uma isikhundla seNkosi noma isikhundla senduna sidinga ukugcwaliswa—
- 5 (a) umndeni waseNdlunkulu lowo, kufanele kusikhathi esingengakanani emva kwesidingo sokugcwalisa kwalesosikhundla, nangokulandela umthetho wendabuko osetshenziswayo—
- (i) baqoke umuntu onelungelo ngokomthetho wendabuko ukuphatha isikhundla leso, emva kokubheka ukuthi imibandela okukhulunywa ngayo kwisigaba 12(1)(a), (b) kanye no (d) iyalandelwa mayelana nalowo muntu; kanye
- 10 (ii) nokulandela izinhlaka zendabuko, kwaziswe uNdunankulu wesifundazwe leso ngemininingwana yalowo oqokelwe ukugcwalisa isikhundla kanye nezizathu zokuqokwa kwalowomuntu; kanye
- (b) noNdunankulu lowo, ngokulandisa kwesigatshana (3), agunyaze lowomuntu oqokwe umndeni wase Ndlunkulu njenge Nkosi esezingeni eliphakeme, ngokulandela umthetho wesifundazwe.
- 15 (2) (a) Umthetho wesifundazwe okulandiswa ngawo kwisigatshana (1)(b) kufanele uhlinzekele—
- (i) ukushicilelwa kwesaziso kuSomqulu kaHulumeni esigunyaza lowo oqokwe njenge Nkosi esezingeni eliphakeme, induna ngokwesimiso sesigatshana (1);
- 20 (ii) kunikezelwe ngesitifiketi segunya kulowo oqokiwe; kanye
- (iii) nokwaziswa kwendlu yobuholi bendabuko yesifundazwe, ngokugunyazwa kweNkosi esezingeni eliphakeme noma induna.
- (b) Umthetho wesifundazwe ungahlinzekela—
- 25 (i) ukuqokwa noma ukwenyulwa kweNduna ngokulandisa komthetho wendabuko; kanye
- (ii) nokubonisana kuka Ndunakulu kanye nomkhandlu wendabuko lowo lapho kudingeka khona ukuba isikhundla seNkosi esezingeni eliphakeme noma induna sidinga ukugcwaliswa.
- 30 (3) Uma kunobufakazi noma izinsolo zokuthi lowo muntu oqokiwe ngokulandisa kwesigatshana (1) akwenziwanga ngendlela yokulandela amasiko nendabuko, uNdunankulu—
- (a) angedlulisa loludaba luye kuleyondlu yabaholi bendabuko yesifundazwe ukuze yenze isinqumo; noma
- 35 (b) angenqaba ukukhipha isitifiketi segunya; kanye
- (c) nokubuyisela emuva kumndeni waseNdlunkulu loludaba ukuze uqhamuke nesisombululo uma isitifiketi segunya senqatshiwe.
- (4) Uma udaba luphindiselwe emuva kumndeni wase Ndlunkulu ukuze uqhamuke nesisombululo ngokulandisa kwesigatshana (3) selucubungisilwe lwaxazululwa, uNdunankulu eneliswa ukuthi izixazululo eziqhamuke nomndeni wase Ndlunkulu zenziwe ngokulandela imithetho yendabuko.
- 40

Ukususwa kwaMakhosi endabuko nezinduna

12. (1) iNkosi noma induna ingasuswa esikhundleni ngaphansi kwalemibandela elandelayo—
- 45 (a) ukulahlwa yicala lapho isigwebo siyizinyanga eziyi 12 ejele noma ngaphezulu kube kungenanhlawulo;
- (b) ukugula ngokomzimba noma ukufiphazeka kwenqondo kuhambisana nencwadi eyamukelekile yezokwelapha, okwenza kubenzima ukuthi iNkosi noma iNduna iqhube umsebenzi wayo;
- 50 (c) ukuqokwa okungekho emthethweni noma igunya; noma
- (d) ukwaphula imigomo noma umthetho wendabuko ogunyaza ukususwa esikhundleni.
- (2) Uma lemibandela elandiswa kwisigatshana (1)(a), (b) kanye no (d) ifinyelela emndenini waseNdlunkulu lapho umndeni waseNdlunkulu ukhetha ukususa iNkosi noma iNduna esikhundleni, umndeni wase Ndlunkulu lowo kufanele ukuba esikhathini esingengakanani njengokulandisa kwezinhlaka zendabuko—
- 55 (a) wazise uNdunankulu wesifundazwe ngemininingwane yeNkosi noma yeNduna leyo okufanele ukuba isuswe esikhundleni; kanye
- (b) nokwethulwa kwezizathu zokususwa esikhundleni.

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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 5
 - (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. 10

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— 15
- (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 20
 - (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. 25
- (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; 30
 - (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— 35
- (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 40
 - (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. 45
- (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— 50
- (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*. 55

- (3) Uma kuqokwa ukuba iNkosi noma iNduna isuswe esikhundleni ngokulandisa kwesigatshana (2), uNdunankulu wesifundazwe lesi, nangokulandela umthetho wesifundazwe kufanele ukuba—
- 5 (a) ahoxise isitifiketi segunya kusukela kumhla wosuku lokusuka kwakhe;
- (b) kushicilelwe isaziso ezinininingwane yeNkosi noma yeNduna esusiwe esikhundleni kuSomqulu kaHulumeni; kanye
- (c) nokwaziswa umndeni waseNdlunkulu, iNkosi noma iNduna esusiwe kanye nendlu yobukhosi bendabuko yesifundazwe lesi ngokususa esikhundleni lowo muntu.
- 10 (4) Uma iNkosi noma induna isuswa esikhundleni, lowo ofanele ukuthatha isikhundla kumele angene esikhundleni ngokwemigomo yendabuko aqhuba imisebenzi yalesosikhundla ngokulandela izimiso zesigaba 11.

Ingxenye 4: Izimiso ngokujwayelekile mayelana nabaholi bendabuko

Ukugunyazwa kwamabamba

- 15 **13.** (1) Uma umuntu ofanele ukuthatha isikhundla seNdlovukazi, seSilo, seNkosi noma seNduna oqokwe ngokulandela isigaba 9 noma 11 eseyingane, uma kulandela umthetho wesiko nendabuko—
- (a) umndeni waseNdlunkulu kumele ngesikhathi esingengakanani —
- 20 (i) ukhethe ibamba elizobambela lomholi oseyingane; kanye
- (ii) nokulandela uhlaka lwendabuko, kwaziswe uNdunankulu wesifundazwe lesi ngemininingwane yalowomuntu okhethwe njengebamba kanye nezizathu zokukhethwa kwakhe; kanye
- (b) uNdunankulu lowo kufanele, ngokulandela umthetho wamasiko nendabuko kanye nokulandela kwe sigatshana (2) no (3), agunyaze ibamba elikhethwe umndeni wase Ndlunkulu ngokwemiyalo yomthetho wesifundazwe.
- 25 (2) Umthetho wesifundazwe okukhulunywa ngawo kusigatshana (1)(b) kufanele uhlizzekele lokhu—
- (a) ukushicilelwa kwesaziso kuSomqulu kaHulumeni esigunyaza lowo muntu okhethwe njengebamba ngokulandisa kwesigatshana (1);
- 30 (b) ukukhishwa kwesitifiketi sokugunyazwa kwembamba elikhethiwe;
- (c) uNdunankulu kumele alubuyekeze njalo udaba lokugunyazwa kwelunga elibambile emva kweminyaka emithathu;
- (d) leyondlu yabaholi bendabuko yesifundazwe kufanele ukuthi yaziswe ngokugunyazwa kwebamba.
- 35 (3) Uma kunobufakazi noma izinsolo zokuthi lowo okhethwe njengebamba, ukukhethwa kwakhe akuhambanga ngendlela yamasiko nendabuko, uNdunankulu kumele—
- (a) abuyisele loludaba emva kwindlu yabaholi bendabuko yesifundazwe ukuze baqhamuke nesisombululo;
- 40 (b) anqabe ukukhipa isitifiketi sokugunyazwa kwebamba; kanye
- (c) nokubuyisela emva emndenini waseNdlunkulu ukuze iyolubuyekeze lolu daba bese iqhamuka nesixazululo, uma isitifiketi segunya senqatshiwe.
- (4) Uma udaba lubuyiselwa emuva kumndeni waseNdlunkulu ukuze uyolubuyekaza bese uqhamuka nesixazululo ngokulandisa kwesigatshana (3), lapho udaba luxazululwe khona, uNdunankulu kufanele agunyaze lowo muntu okhethwe umndeni wase-Ndlunkulu uma eneliswa ukuthi ukubuyekazwa kanye nokuxazululwa kwaloludaba umndeni wase Ndlunkulu kwenziwe ngendlela yokulandela umthetho wesintu.
- (5) Uma umuntu obefanele ukuthatha isikhundla esekulungele ukuba iSilo, iNdlovukazi, iNkosi noma iNduna engeseyona ingane ngokomthetho wesintu, lelobamba eligunyazwe ngokulandela isigatshana (1) komele lisibeke phansi isikhundla sokuba yibamba, kuthi lowo ofanele ukuthatha isikhundla—
- 50 (a) agcotshwe esikhundleni nguMongameli uma ezoba iNdlovukazi noma iSilo ngokulandisa kwesigaba 9(1)(b), kuthi isitifiketi okukhulunywa ngaso kusigaba 9 (2)(b) anikezwe sona emva kokushicilelwa kwegama lakhe kuSomqulu kaHulumeni, kuthi
- 55 (b) lapho kuzogcotshwa khona iNkosi noma iNduna esikhundleni nguNdunankulu wesifundazwe ngokulandisa kwesigatshana 11(1)(b) anikezwe isitifiketi njengokulandisa kwesigaba 11(2)(a)(ii), emva kokuba igama lakhe lishicilelwe kuSomqulu kaHulumeni.

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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. 5

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— 20
 - (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) 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— 35

- (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— 40

- (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

UHLAKA LOMTHETHOSIVIVINYWA WABAHOLI
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(6) Uma ibamba linikwe igunya lokuba yiNdlovukazi noma iSilo, uNdunankulu kumele azise uMongameli—

- (a) ngemininingwane yebamba;
 (b) lapho ibamba sekumele ukuba lishiye phansi isikhundla salo; kanye
 5 (c) nokuhoxishwa kwesitifiketi sokugunyazwa njengebamba.

Abantu ababamba njengomholi wendabuko

14. (1) Ngokulandela umthetho wesifundazwe, umndeni waseNdlunkulu ungaqoka umuntu ofanele ukuba yibamba leNdlovukazi, leSilo, iNkosi noma iNduna uma—

- (a) ofanele ukuthatha isikhundla seNdlovukazi, Silo, Nkosi noma seNduna engakhethwanga umndeni wase Ndlunkulu ngokulandisa kwesigaba 9(1) noma 11(1);
 (b) lapho ukuqokwa kozothatha isikhundla seNdlovukazi, seSilo, seNkosi noma seNduna kusacutshungulwa kungakaqhumukwa nesixazululo ngokulandela isigaba 9(3) noma 11(3); noma
 15 (c) lapho iNdlovukazi, iSilo, iNkosi noma iNduna izobe ingekho kusifunda esiphethe ngaphansi kwezizatha ezibhalwe kusigaba 15, ithuba eleqile kuzinyanga eziyisithupha mayelana—
 (i) nokwelashwa kokugula;
 (ii) nezizathu zokuqhuba izifundo; kanye
 20 (iii) nezinye izizathu ezisemthethweni.

(2) Ukuba sesikhundleni okwethutshana ngokulandisa kwesigatshana (1) kufanele kwenzeke ngokulandela umthetho wesifundazwe, lowomthetho komele uhlinzekele—

- (a) ukukhiswa kwesitifiketi sokubamba esikhundleni wumkandlu ofanele;
 (b) ukubuyezwa kwesikhundla sokubamba njalo;
 25 (c) ukususwa kwebamba esikhundleni; kanye
 (d) nokwaziswa kwendlu yabaholi bendabuko yesifundazwe ngesikhundla sebamba.

(3) Umuntu okhethwe njengebambo leNdlovukazi leSilo, leNkosi noma leNduna, ngokulandisa kwesigatshana (1) unamalungelo okwenza yonke imisebenzi encike kulesosikhundla se Ndlovukazi, seSilo, seNkosi noma seNduna leyo.

(4) Uma umuntu ekhethwe njengebamba leNdlovukazi noma leSilo, lowomkandlu okukhulunywa ngawo kusigatshana (2) (a), komele wazise uMongameli—

- (a) ngesikhundla sebamba; kanye
 (b) nangokususwa komuntu obeyibamba leNdlovukazi noma leSilo.

35 Amasekela abaholi bendabuko

15. (1) Isilo, indlovukazi, iNkosi noma iNduna, emva kokubonisana nomndeni waseNdlunkulu, abeke isekela elizobamba isikhundla sakhe uma iSilo, iNdlovukazi, iNkosi noma iNduna—

- (a) iba yilunga eligcwele lomkhandludolobha;
 40 (b) ikhethwe njengelunga lesishayamthetho lesifundazwe;
 (c) ikhethwe njengelunga lesishayamthetho sikaZwelonke;
 (d) ikhethwe njengelunga kwindlu Yezifundazwe kaZwelonke; futhi
 (e) ekhethwe noma egcotshwele kwisikhundla noma ngabe kuyiphi indlu yabaholi bendabuko.

(2) Ukugcotshwa ngokulandela isigatshana (1) kumele kwenziwe ngokulandela umthetho wesifundazwe, lowomthetho kumele uhlinzekele—

- (a) ukususwa esikhundleni komuntu ogcotshwe njengesekela;
 (b) ukukhiswa kwesitifiketi sinikezwe isekela umkandlu ofanele; kanye
 (c) nokwazisa leyondlu yabaholi bendabuko yesifundazwe ngalokogcotshwa.
 50 (3) Umuntu ogcotshwe njengesekela ngokucacisa kwesigatshana (1) angaqhuba imisebenzi encike kulesikhundla sobukhosi, seNkosi noma sobuduna.

(4) Uma iSilo noma iNdlovukazi igcoba isekela ngokulandisa kwesigatshana (1), iSilo noma iNdlovukazi komela ukuba yazise uMongameli ngalokhokugcotshwa.

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 referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law 55

ISAHLUKO 4**IZINDLU ZOBUHOLI BENDABUKO****Izindlu zobuholi bendabuko eRiphabliki**

16. (1) Izindlu zobuholi bendabuko kwiRiphabliki yilezi:—
- 5 (a) indlu yobuholi bendabuko kazwelonke kanye neyezifundazwe njengokulandisa kwesigaba 212(2)(a) soMthethosisekelo; kanye
- (b) nezindlu zabaholi bendabuko zezifunda njengokwemigomo yesigaba 17.
- (2) Indlu yabaholi bendabuko kanye nezinsiza zayo akumele zisetshenziselwe ukuqakambisa noma ukugqugquzela izinhloso zeqembu lezombangazwe
- 10 (3) Umthetho wesifundazwe kumele uhlinzekele izinhlelo ezivumela inani labesifazane ukuba—
- (a) limelwe kwindlu yabaholi bendabuko yesifundazwe lesi; kanye
- (b) nokumela abaholi bendabuko besifunda kwindlu kaZwelonke Yabaholi Bendabuko.

15 Izindlu zabaholi bendabuko basekhaya

17. (1) Indlu yasekhaya yabaholi bendabuko iyokwakhiwa ngokulandela umthetho wesifundazwe lapho kukhona umholi wendabuko ongaphezu koyedwa owakhele umkhandlu kamasipala wesifunda noma umkhandlu wedolobha elikhulu.
- (2) (a) Amalunga endlu yabaholi basekhaya angabi ngaphansi kwamahlanu noma ngaphezu 10 noma edlule angaphezu 20 njengoku nquma kuka Ngqongqoshe la kunemikhandlu yendabuko ongaphezu 35 esifundeni esisodwa noma umkhandlu kamasipala wedolobha elikhulu.
- (b) Amalunga endlu yesifunda yabaholi bendabuko akhethwa iSilo noma iNdlovukazi noma ababamele kanye nabaholi bendabuko abakhele lowomkhandlu wesifunda kamasipala noma umkhandlu kamasipala wedolobha elikhulu.
- 25 (c) Uhlaka lokhetho olucaciswa kwibinza (b) kufacele lubhekele ukukhethwa kwenani elanele labesifazane kwindlu yabaholi bendabuko basekhaya kuleyondawo okukhulunywa ngayo.
- (3) Imisebenzi yezindlu zasekhaya zabaholi bendabuko ilena elandelayo—
- 30 (a) Ukweluleka umkhandlu wesifunda kamasipala noma umasipala wedolobha elikhulu—
- (i) ezintweni eziphathelene nabaholi bendabuko, imithetho ephathelene namasiko wendabuko kanye nemiphakathi yendabuko eyakhele umkhandlu kamasipala wesifunda nomawedolobha elikhulu;
- 35 (ii) ohlelweni lohla lwezintuthuko olungaba nomphumela othize emiphakathini; noma
- (iii) ekuthuthukiseni noma ekwaxhiweni imithetho kamasipala engaba nemiphumela ethize emiphakathini.
- (b) ukubamba iqhaza ezinhlelweni zentuthuko emiphakathini yasemakhaya;
- 40 (c) ukubamaba iqhaza ezintweni zasemakhaya eziqondiswe ekuhloleni izinhlelo zika hulumeni emiphakathini yasemakhaya.
- (4) Lapho indlu engeke yasungulwa khona ngokwesigatshana (1), imisebenzi yendlu yendabuko okukhulunywa ngayo kusigatshana (3), iyokwenziwa umkhandlu wendabuko kumasipala noma wedolobha elikhulu.
- 45

Ukuthunyelwa koHlaka lwemithethosivivinywa kwindlu Yabaholi Bendabuko kaZwelonke

18. (1)(a) Noma ngabe uluphi uhlaka lomthethosivivinywa oluqondene nomthetho wendabuko namasiko omphakathi wendabuko kumele, anduba uphunyezwe yindlu yePhalamende lapho wemukelwa khona, uthunyelwe kunobhala wePhalamende nakwindlu kaZwelonke Yabaholi Bendabuko ukuze iphawule ngawo.
- (b) Kungakapheli izinsuku eziwu 30, indlu kaZwelonke Yabaholi Bendabuko emva kosuku ethunyelwe ngalo, yenze noma ngayiziphi iziphakamiso ezifisayo ngalohlaka lomthethosivivinywa.
- 55 (2) Umkhandlu wesifundazwe noma umkhandludolobha ungalandela noma wamukele leyonqubo elandiswa kwisigatshana (1) mayelana nokuthunyelwa kohlaka

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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** 5
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— 30
- (a) seek the concurrence of—
 - (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; 35
 - (b) consult with—
 - (i) the relevant structures of traditional leadership; and
 - (ii) the South African Local Government Association; 35
 - (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.

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lomthethosivivinywa lwesifundazwe noma uhlaka lomthethosivivinywa lomkhandlu-dolobha kwindlu yabaholi bendabuko besifundazwe noma kwindlu yabaholi bendabuko yasekhaya.

ISAHLUKO 5**5 AMAQHAZA NEMISEBENZI YABAHOLI BENDABUKO****Imisebenzi kanye nendlela yokuziphatha kwabaholi bendabuko**

19. (1) Umholi wendabuko wenza umsebenzi awunikiwe ngokubalula komthetho wamasiko nendabuko yalowo mphakathi, kanye nemithetho esetshenziswayo.

Ukwabiwa kwemisebenzi namaqhaza kanye nemigomo elawulayo

10 20. (1) Uhulumeni kazwelonke noma wesifundazwe angashaya umthetho wokuhlinzekela imisebenzi yemikhandlu yendabuko noma abaholi bendabuko kulezizinto—

- (a) ubuciko namasiko;
 - (b) ezokuphathwa komhlaba kanye nezolimo;
 - 15** (c) ezempilo nenhlalakahle;
 - (d) ezomthetho;
 - (e) ezokuphepha nokuvikeleka;
 - (f) ukubhalisa imishado yesintu, ukufa kanye nezingane ezizelwe;
 - (g) ezentuthuko;
 - 20** (h) ezokuvakasha nemvelo;
 - (i) ukugcinwa kwamagugu omhlaba; kanye
 - (j) nokusabalalisa ulwazi ngemigomo kanye nezinhlelo zikahulumeni.
- (2) Lapho ingxenyekahulumeni kazwelonke noma yesifundazwe icabanga ukwaba umsebenzi womkhandlu wendabuko noma wabaholi bendabuko ngokwesigatshana (1)
- 25** kumele yenze lokhu okulandelayo—
- (a) ithole ukwesekelwa—
 - (i) uNgqongqoshe uma iyingxenyekahulumeni kazwelonke; noma
 - (ii) ilunga lomkhandlu ophethe oqondene nezindaba zendabuko futhi oyingxenyekahulumeni wesifundazwe;
 - 30** (b) baxoxisane nezakhiwo eziqondene nobuholi bendabuko;
 - (c) iqinisekise ukuthi lokho kwabiwa kwemisebenzi kuyahambisana nomthetho sisekelo kanye neminye imithetho ethintekayo;
 - (d) ukubhekisisa indlela umthetho wamasiko nendabuko osebenza ngayo kwimiphakathi yendabuko eyahlukahlukene;
 - 35** (e) ukuphokophele nokuqinisekisa ukuthi kwabiwa kwemisebenzi kwenzeka ngendlela efanele futhi kuhambisana nezidingo kanye nokumiswa kwezinhlaka zokuqinisekisa ukuthi izidingo ziphathwa ngendlela;
 - (f) ukuqinisekisa ukuthi kwabiwa kwemisebenzi kwenzeka ngendlela efanayo kuzo zonke izindawo lapho kukhona izinhlaka zobuholi bendabuko; kanye
 - 40** (g) ukugquzela indlela yokubusa ngokubambisana, uhlelo lwentuthuko oluhlanganyele, intuthuko enesisekelo kanye nokulethwa kwezidingo ngokwabiwa kwemisebenzi.

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
10

(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.

(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— 35
- (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

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

ISAHLUKO 6**UKUXAZULULWA KWEMIBANGO KANYE NEKHOMISHANA
YOKUXAZULULA IMIBANGO YOBUHOLI BENDABUKO****Ukuxazululwa kwemibango**

- 5 21. (1) (a) Uma kuqubuka umbango ngomthetho wamasiko nendabuko noma ngendaba yesintu emphakathini noma kwimiphakathi yendabuko noma ezinhlakeni zendabuko mayelana nokuqaliswa kokusebenza kwalo mthetho, amalunga noma abaholi bendabuko balemiphakathi ethintekayo kuyomele bazame ukuxazulula lowo mbango ngokwasekhaya ngokulandela indlela yesintu.
- 10 (b) Uma umbango okukhulunywa ngawo kwibinza (a) ngaphezulu udinga ukuba ucuthungulwe ikhomishana njengo kusho kwesigaba 23(2), umbango ungabikelwa ikhomishana bese kuthi lokhu okushiwo kwibinza (a) ngaphezulu kungabe kusasebenza.
- (2) (a) Uma umbango okukhulunywa ngawo esigatsheni (1) ungaxazululeki njengo
15 kuhlizeka kwawo kulesisigatshana kumele udluliselwe kwindlu yabaholi bendabuko yesifundazwe, iyona eyozama ukuxazulula ngokwenqubomgomo ebekiwe.
- (b) Uma indlu yabaholi bendabuko yehluleka ukuxazulula njengokucacisa kwebinza (a) lowo mbango kuyomele udluliselwe kuNdunankulu waleso sifundazwe, yena kuyomele awuxazulule ngemuva kokuxoxisana—
- 20 (i) nalezo zihlangothi ezibangayo; kanye
(ii) nendlu yabaholi bendabuko yesifundazwe.

Ukusungulwa kwekhomishini

22. (1) Nakhu ukusungulwa kwekhomishana ezokwaziwa ngokuthi Ikhomishana Yokuxazulula Imibango yoBuholi beNdabuko.
- 25 (2) Ikhomishana kufanele yenze imisebenzi ngokwethembeka nango kungakhethi macala.

Ukukhethwa kwamalunga ekhomishana

23. (1) uMongameli kuyomele aqoke abantu bangeqi eshumini nanhlanu abanolwazi olunzulu ngezamasiko nezinhlaka zobuholi bendabuko.
- 30 (2) Uma kuvela isikhundla kwikhomishana kuyomele sivalwe ngokwesigatshana (1).
- (3) uMongameli angalesula ilunga lekhomishana ngalemibandela—
- (a) uma ilunga lekhomishana ligwethshwe inkantolo ngecala elingenanhlawulo;
- (b) likhubazekile;
- (c) litholwe inkantolo ukuthi liyehluleka ukukhokha izikweletu zalo; noma
- 35 (d) lingaphilile kahle ngengqondo.

Izikhala Zemisebenzi

24. Izikhala zekhomishane zovela uma ilunga—
- (a) uma ilunga lisula ngokufaka incwadi yesaziso kuMongameli;
- (b) lisuswa ngokulandisa kwesigaba 23(3); noma
- 40 (c) libe ilunga lesishayamthetho sikazwelonke noma lesifunda noma lomkhandlu kamasipala okukanye libe ilunga eliphelele lendlu kazwelonke yezifunda.

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- (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.

Imisebenzi yekhomishana

25. (1) Ikhomishana isebenza kuzwelonke futhi inelungelo lokuthatha isinqumo noma ngabe isiphi ekuzazululeni umbango wabaholi bendabuko ngokwesigatshana (2) noma kusiphi isifundazwe.
- 5 (2) (a) Ikhomishana inelungelo lokucubungula izicelo noma izicubungelele ngokwayo—
- (i) uma kunokungabaza ukuthi ubukhosi noma ubuholi bendabuko okanye ubuduna abakhiwanga ngokulandela indlela yamasiko nendabuko;
 - (ii) la isikhundla sobuholi bendabuko noma ubulunga besikhundla bubangwa
 - 10 (iii) la imiphakathi ifuna igunya lokuba imiphakathi yendabuko;
 - (iv) ukwakhiwa ngokusemthethweni noma ukuhlakazwa kwesizwe;
 - (v) umbango osukela ekubangweni kwemincele nasekwakhekeni kwesizwe; noma
 - 15 (vi) kunesiqiniseko esikhomba ukuthi kumele kucutshungulwe njengo kulandisa kwaleli binza.
- (b) isimangalo siyofakwa noma ngabe ubani futhi kumele sihambisane nayo yonke imininingwane ecacisayo ukuthi sinhloboni.
- (c) ikhomishana ingenqaba ukwamukela isimangalo noma isikhalo sombango uma kunezinkomba zokuthi—
- 20 (i) Umuntu ofake isimangalo akanikezanga ikhomishana yonke imininingwane efanele; noma
 - (ii) Noma isimangalo sidinga ukuba sixazululwe ngokwesigaba 19(1)(a) uma singeke sixazululwe ngokwesigaba 19(1)(b).
- (3) (a) Ikhomishana uma ibheka isimangalo noma iphenya ngombango kuyomele 25 ibhekele noma isebenzise umthetho wamasiko nendabuko alowo mphakathi nokwenze kusuke umbango noma kufakwe isicelo.
- (b) Ikhomishana iyolandela amasiko nendlela esetshenziswayo kulowo mphakathi uma kubunjwa ubukhosi, ubuholi bendabuko noma ubuduna.
- (4) Ikhomishana inelungelo lokucubungula izimangalo noma imibango yobuholi 30 bendabuko kusukela mhla ka 1 Septemba 1927 ngokuvuma kwesigatshana (2)(a)(i).
- (5) Ikhomishana kuyomele iqede umsebenzi wayo kwisikhathi seminyaka emihlanu noma engaphezulu ngokuthanda kukaMongameli.
- (6) Isigaba 2, 3, 4, 5 no 6 somthetho wekhomishini ka 1947 (uMthetho Nom. 8 ka 1947) siyosebenza ngezinguquko ezidingekayo ngekhomishana.

35 Izinqumo zekhomishana

26. (1) Isinqumo sekhomishana siyothathwa ngokuvumelana kwengxenywe yababili kwabathathu.
- (2) Isinqumo seKhomishana kufanele ukuba kungapheli amaviki amabili sithathiwe, sedluliselwe ku—
- 40 (a) Mongameli ukuze sisetshenziswe njengokulandisa kwesigaba 9 noma 10, uma isikhundla se Ndlovukazi noma seSilo sithinteka kulokhu; kanye
 - (b) NoHulumeni wesifundazwe noma imuphi umkhakha kaHulumeni okufanele usebenzise lese sinqumo seKhomishana ngokulandela umthetho wesifundazwe ohlahla ukusetshenziswa kwalesinqumo okungaphathelene 45 nokugunyazwa noma ukususwa esikhundleni kwe Ndlovukazi noma kweSilo ngokwesigaba 9 noma 10.

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

(3) Zonke izinqumo ezithathwe ikhomishana kumele zaziswe uMongameli.

ISIAHLUKO 7

IZIMISO NGOKUJWAYELEKILE

Ukuziphatha kwabaholi bendabuko

- 5 27. (1) Indlela yokuziphatha equkethwe ku "Schedule" kufanele ilandelwe nguwowonke umholi wendabuko kanye nemikhandlu yendabuko futhi kufanele ukuba ifundwe ngokulandela umthetho wvokuziphatha wesifundazwe njengokulandisa kwesigatshana (2)(a).
- (2) (a) Umthetho wesifundazwe kumele wenze noma wakhe umthetho wokuziphatha wesifundazwe wabaholi bendabuko kanye nemikhandlu yendabuko kulesosifundazwe ozohambisana nomthetho wokuziphatha oqukethwe ku "Schedule"
- (b) Lowomthetho wesifundazwe wokuziphatha njengokulandisa kwebinzana (a).
- (i) ungahlahla noma ulawule ingqikithi ephawulwe kusigaba sokuqala noma sesibili se "Schedule" noma; noma
- 15 (ii) ungabalula noma iyiphi into okudinga ukuba ilandelwe umholi wendabuko noma umkhandlu wendabuko.
- (3) Umthetho wesifundazwe osetshenziswayo kumele ubhekele lokhu—
- (a) izindlela ezizosetshenziswa lapho kwephulwe khona umthetho wokuziphatha; kanye
- 20 (b) nenhlawulo engabizwa lowo osuke ephule umthetho wokuziphatha oqondene nomholi wendabuko kube kungahlanganisi ukususwa komholi wendabuko esikhundleni; kanye
- (c) kubhekwe nesikhala sebamba ngesikhathi umholi wendabuko esamiswe khona ngokwephula umthetho wokuziphatha, uma ngabe inhlawulo enjalo
- 25 ivunyelwe.

Ukuguqulwa kwezinhlelo okwesikhashana

28. (1) Lowomholi wendabuko owakhethwa ngokulandela umthetho wesifundaze futhi usathathwa njengomholi wendabuko, anduba lomthetho uqale ukusebenza, uthathwa njengo muntu ogunyazwa yisigaba 9 noma 11, ngokulandela isinqumo se
- 30 Khomishane ngokwesigaba 26.
- (2) Umuntu oqokwe njengebamba anduba lomthetho uqale ukusebenza, futhi ebe ethathwa njengebamba noma esesikhundleni okwesikhashane noma ayisekela, uthathwa njengoqokelwe lesosikhundla ngokulandela isigaba 13, 14 noma 15.
- (3) Noma ngabe yisiphi "isizwana" esausungulwa sagunyazwa anduba lomthetho
- 35 uqale ukusebenza, sithathwa njengomphakathi wendabuko njengokucacisa kwesigaba 2, ngaphansi—
- (a) Kokuhoxiswa noma kokugunyaza kwaso ngokulandela imibandela yesigaba 7; noma
- (b) Ngokulandela isinqumo seKhomishane ngaphansi kwesigaba 26.
- 40 (4) Umkhandlu wendabuko owasungulwa anduba lomthetho uqale ukusebenza futhi ugunyazwe kanjalo, uthadhwa njengomkhandke wendabuko njengokulandisa kwesigaba 3 kufanele wenze imisebenzi ephawulwa kusigaba 4; Kufanele lomkhandlu ulondele izimiso ngaphansi kwesigaba 3(2) kungakapheli unyaka lomthetho uqalile ukusebenza.
- 45 (5) Noma ngabe wumuphi umkhandlu womphakathi owasungulwa ngokulandela umthetho osetshenziswayo anduba lomthetho uqale ukusebenza, uzoqhubeka nokusebenza kuze kufike isikhathi lapho usuhlakazwa khona ngokulandela umthetho wesifundazwe, ukuhlakazwa kumele kwenziwe kungakapheli iminyaka emibili lomthetho uqalile ukusebenza, ngaphandle uma
- 50 ubuholi bendabuko obuphathelene nalowomkhandlu womphakathi busaphenywa yikhomishana ngokomthetho 25(2).
- (6) (a) Ilunga lesishayamthetho sesifundazwe elibhekele izindaba zobuholi bendabuko kumele, lishicilele kuSomqulu ka Hulumeni ungakapheli unyaka lihlakaze umkhandla wesigodi, Ibandla Lamakhosi, uMkhandlu Wamaduna kanye
- 55 nabasezigcemeni kumkhandlu wendabuko.
- (b) Isaziso sokuhlakaza umkhandlu wesigodi Ibandla Lamakhosi, uMkhandlu

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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. 5

(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 10

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.”; 15 20 25

(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 50

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— 55

- (a) any recommendations of the Commission;

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Nomaduna kanye nabezigceme kumele ulawule umthetho, kanye nemiphumela yokuhlakazwa ihlanganisa

- (i) ukuthumela kwamabhuku ezinto, izindleko kanye mamabhuku okusebenza kumnyango ofanele wesifundazwe, kumasipala noma indlu yabaholi bendabuko yasekhaya.
- (ii) nokushiywa phansi kwesikhundla somphathi sikhundla somkhandlu wesigodi, kanye
- (iii) nokuthunyelwa kwabasebenzi balo mkhandlu wesigodi.
- (7) Ikhomishana kumele, ngokwesigaba 25(2), icubungule isikhundla samakhosi esasungulwa futhi sangunyazwa, esisaqhubeka nokugunyazwa kungakaqali ukusebenza kwalomthetho, anduba iKhomisane iqale uphenya olunye.

Ukuchibiyelwa koMthetho 20 ka 1998, njengoba uchibiyelwa uMthetho 21 ka ka 2000

29. uMthetho wesiBhunu I "The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998)", uyachibiyelwa ngoku—

(a) faka Isihloko Eseluliwe salesiSihloko Eseluliwe:

"Om voorsiening te maak vir 'n raamwerk vir die bepaling van salarisse en toelaes van die President, lede van die Nasionale Vergadering, vaste afgevaardigdes na die Nasionale Raad van Provinsies, Adjunkpresident, Ministers, Adjunkministers, tradisionele leiers, lede van die plaaslike Huisse van Tradisionele Leiers, lede van die provinsiale Huisse van Tradisionele Leiers en lede van die Nasionale Huis van Tradisionele Leiers; om voorsiening te maak vir 'n raamwerk vir die bepaling van die boonste perke van salarisse en toelaes van Premiers, lede van Uitvoerende Rade, lede van provinsiale wetgewers en lede van Munisipale Rade; om voorsiening te maak vir 'n raamwerk vir die bepaling van pensioen- en mediese fonds-voordele van ampsbektelers; om voorsiening te maak vir die herroeping van sekere wette; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan."

(b) kufakwe kusigaba 1 lokhu—

- (i) " 'ampsbekteler' 'n Adjunkpresident, 'n Minister, 'n Adjunkminister, 'n lid van die Nasionale Vergadering, 'n vaste afgevaardigde, 'n Premier, 'n lid van 'n Uitvoerende Raad, 'n lid van 'n provinsiale wetgewer, 'n tradisionele leier, 'n lid van 'n plaaslike Huis van Tradisionele Leiers, 'n lid van 'n provinsiale Huis van Tradisionele Leiers, 'n lid van die Nasionale Huis van Tradisionele Leiers en 'n lid van 'n Munisipale Raad; (viii)";
- (ii) " 'tradisionele leier' [enige persoon ingevolge artikel 5(5) geïdentifiseer] 'n tradisionele leier soos omskryf in artikel 1 van die "Traditional Leadership and Governance Framework Act, 2003"; (xii)
- (iii) " 'voordele' met betrekking tot 'n tradisionele leier, 'n lid van 'n plaaslike Huis van Tradisionele Leiers, 'n lid van 'n provinsiale Huis van Tradisionele Leiers en 'n lid van die Nasionale Huis van Tradisionele Leiers daardie voordele wat die President ingevolge artikel 5(3) mag bepaal, en met betrekking tot alle ander ampsbektelers, die bydraes in artikels 8(2) en (5) en 9(2) en (5) beoog. (ii)";

(c) kusigaba 5 kufakwe lesigaba esilandelayo:

Salarisse, toelaes en voordele van tradisionele leiers, lede van plaaslike Huisse van Tradisionele Leiers, lede van provinsiale Huisse van Tradisionele Leiers en lede van Nasionale Huis van Tradisionele Leiers.

5. (1) Tradisionele Leiers, lede van die plaaslike Huisse van Tradisionele Leiers, lede van die provinsiale Huisse van Tradisionele Leiers en lede van die Nasionale Huis van Tradisionele Leiers is, ondanks enige andersluidende bepalings in enige wet vervat, geregtig op die salarisse en toelaes wat die President na oorleg met die betrokke Premier van tyd tot tyd by proklamasie in die *Staatskoerant* bepaal, na oorweging van—

(a) enige aanbevelings van die Kommissie;

- (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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- (b) die rol, status, pligte, werksaamhede en verantwoordelikhede van die verskillende kategorieë tradisionele leiers, verskillende lede van die plaaslike Huise van Tradisionele Leiers; verskillende lede van die Huise van Tradisionele Leiers in die onderskeie provinsies en verskillende lede van die Nasionale Huis van Tradisionele Leiers;
- (c) die bekostigbaarheid van verskillende vlakke van besoldiging van politieke ampsbekleërs;
- (d) heersende beginsels en vlakke van besoldiging in die algemeen in die samelewing;
- (e) die noodsaaklikheid vir die bevordering van gelykheid en eenvormigheid van salarisse en toelaes vir gelykstaande diens verrig;
- (f) die bevordering van samewerking, eenheid en begrip tussen tradisionele gemeenskappe op nasionale vlak;
- (g) die omvang van die rol en werksaamhede van tradisionele leiers oor provinsiale grense heen; en
- (h) inflasiverhogings.
- (2) Ondanks die bepalings van subartikel (1) is 'n tradisionele leier, 'n lid van 'n plaaslike Huis van Tradisionele Leiers, 'n lid van 'n provinsiale Huis van Tradisionele Leiers of 'n lid van die Nasionale Huis van Tradisionele Leiers wat verskillende openbare ampte gelyktydig bekleë, slegs geregtig op die salaris, toelaes en voordele van die openbare amp waarvoor hy of sy die hoogste besoldiging verdien, maar—
- (a) hierdie subartikel sluit nie die betaling van klein uitgawes vir die verrigting van ander werksaamhede as daardie waarvoor sodanige ampsbekleër sodanige hoogste besoldiging ontvang, uit nie; en
- (b) waar slegs 'n toelae ingevolge subartikel (1) vasgestel is met betrekking tot 'n tradisionele leier se lidmaatskap van 'n plaaslike Huis van Tradisionele Leiers, 'n provinsiale Huis van Tradisionele Leiers of die Nasionale Huis van Tradisionele Leiers, is sodanige tradisionele leier, bykomend tot sy of haar salaris, toelaes en voordele as 'n tradisionele leier, geregtig op sodanige toelae.
- (3) (a) Die President kan, indien hy of sy dit na oorleg met die Minister en die betrokke premier wenslik ag, by proklamasie in die *Staatskoerant* voordele bepaal waarop 'n tradisionele leier, 'n lid van 'n plaaslike Huis van Tradisionele Leiers, 'n lid van 'n Provinsiale Huis van Tradisionele Leiers of 'n lid van die Nasionale Huis van Tradisionele Leiers geregtig is, behoudens sodanige voorwaardes as wat die President mag bepaal.
- (b) Indien die President besluit om sodanige voordele te bepaal, is die kriteria gelys in paragrafe (a) tot (h) van subartikel (1), met die nodige aanpassings, van toepassing.
- (4) Die bedrag betaalbaar ten opsigte van salarisse, toelaes en voordele aan tradisionele leiers, lede van die plaaslike Huise van Tradisionele Leiers, lede van die provinsiale Huis van Tradisionele Leiers en lede van die Nasionale Huis van Tradisionele Leiers word betaal uit fondse wat vir dié doel, in die geval van die Nasionale Huis van Tradisionele Leiers, deur die Parlement, en in die geval van tradisionele leiers, [en] lede van die plaaslike Huise van Tradisionele Leiers en lede van die provinsiale Huise van Tradisionele Leiers, na gelang van die geval, deur 'n provinsiale wetgewer, bewillig is.
- [(5) 'n Tradisionele leier is 'n persoon geïdentifiseer deur die Minister na oorleg met die betrokke Premier by kennisgewering in die *Staatskoerant* vir doeleindes van hierdie Wet.]
- (6) Ondanks die bepalings van subartikel (1), is 'n lid van die Nasionale Huis van Tradisionele Leiers met ingang van 10 April 1997, totdat 'n bepaling ingevolge subartikel (1) gemaak is, geregtig op 'n toelae soos deur die President by proklamasie in die *Staatskoerant* bepaal vir werklike pligte verrig.
- (d) ngokufaka kusigaba 8 isigatshana (6) esilandelayo:
“(6) Die bepalings van hierdie artikel is, behoudend artikel 5(3), nie van toepassing op 'n tradisionele leier, 'n lid van 'n plaaslike Huis van Tradisionele Leiers, 'n lid van 'n provinsiale Huis van Tradisionele Leiers en 'n lid van die Nasionale Huis van Tradisionele Leiers nie.”

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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.”.

5

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*.

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- (e) ngofaka kusigaba 9 isigatshana (6) esilandelayo:
“(6) Die bepalings van hierdie artikel is, behoudend artikel 5(3), nie van toepassing op 'n tradisionele leier, 'n lid van 'n plaaslike Huis van Tradisionele Leiers, 'n lid van 'n provinsiale Huis van Tradisionele Leiers en 'n lid van die Nasionale Huis van Tradisionele Leiers nie.”
- 5

Isihloko esifingqiwe kanye nokuqala kokusebenza kwaloMthetho

30. Lomthetho ubizwa ngokuthi Uhlaka Lo UMthethosivivinywa waBaholi Bendabuko Nokuphatha ka2003. Uyoqala ukusebenza ngosuku oluyomenyezela nguMongameli ngokushicilela kuSomqulu kaHulumeni.

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.

ISHEDULI**INQUBO YOKUZIPHATHA****Ukuziphatha komholi wendabuko**

- 5 1. Umholi wendabuko—
- (a) kumele enze umsebenzi anikwe wona ngobuqotho, ngokuzikhandla, ngokwethembeka kanye nangendlela esobala;
- (b) kumele aqhube umsebenzi ngokuzinikela;
- (c) akumele aziphathe ngendlela ewukuphoxa, engelisi noma ewubudlwempe;
- 10 (d) kumele alandele imithetho esetshenziswayo;
- (e) kumele asebenzele ekwakheni ngcono umphakathi wendabuko noma umphakathi awusebenzelayo;
- (f) kumele aphuhlise ubumbano kwimiphakathi yendabuko;
- (g) akumele athathe izenzo ezingaholela ekwahlukaniseni imiphakathi yendabuko;
- 15 (h) kumele aphuhlise ukwakhiwa kwesizwe;
- (i) akumele anqabe ukusiza ngenxa yesibopho zombangazwe;
- (j) kufanele ukuba akhe ubudlelwano obuhle nemikhakha kaHulumeni axhumana nayo;
- 20 (k) kumele aphuhlise imibandela yemigomo yomphakathi ovulekile; futhi
- (l) abalule zonke izipho azemukele.

Ukuziphatha komkhandlu wendabuko

2. Umkhandlu wendabuko kumele—
- (a) wenze umsebenzi owabelwe wona, ngobuqotho nangokuzinikela,
- 25 (b) uqhube umsebenzi wawo ngendlela yokuzinikela;
- (c) ulandele umthetho osetshenziswayo;
- (d) usebenzele ekwakheni ngcono umphakathi wendabuko ewusebenzelayo;
- (e) ulandele imigomo yokuphatha umsebenzi womphakathi njengokucacisa
- 30 kwesigaba 195 soMthethosisekelo; kanye
- (f) nokwakha ubudlelwano obuhle nemikhakha kaHulumeni axhumana nayo.

