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THE PRESIDENCY

No. 38

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

No. 23 of 2009: Traditional Leadership and Governance Framework Amendment Act, 2009.



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[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 January 2010.)

To amend the Traditional leadership and Governance Framework Act, 2003, so as to substitute definitions and to insert definitions; to provide for the recognition of kingships or queenships and the withdrawal of such recognition by the President on the recommendation of the Minister; to provide for the establishment and recognition of principal traditional communities; to further regulate the establishment of traditional councils; to provide for the establishment and recognition of kingship or queenship councils; to provide for the establishment and recognition of principal traditional councils; to provide for the establishment of sub-traditional councils; to provide for the functions of traditional councils; to provide for regulatory powers; to provide for a principal traditional leadership as a forth position of traditional leadership to further regulate the recognition and removal of kings and queens; to provide for the recognition and removal of principal traditional leaders; to further regulate the recognition and appointments of regents, persons acting as traditional leaders and deputy traditional leaders; to further regulate the election of members of local houses of traditional leaders; to provide for a relationship between a provincial house and local houses; to further regulate the roles of traditional leaders; to provide for the reconstitution and operation of the Commission on traditional leadership Disputes and Claims; to provide anew for the transitional provisions relating to tribal authorities, community authorities and paramountcies; to amend the remuneration of Public Office Bearers Act, 1998, so as to make provision for the remuneration of non-traditional leader members of traditional councils, traditional sub-council, principal traditional councils and kingships or queenship councils; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 41 of 2003

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

Act No. 23, 2009

TRADITIONAL LEADERSHIP AND
GOVERNANCE FRAMEWORK AMENDMENT ACT, 2009

- (a) the substitution for the definition of “Commission” of the following definition:
 “ **‘Commission’** means the commission established by section 22 and includes a committee established by section 26A;”;
- (b) the substitution for the definition of “kingship” of the following definition: 5
 “ **‘kingship or queenship’** means a kingship or queenship established in terms of section 2A;”;
- (c) the insertion after the definition of “kingship” of the following definition:
 “ **‘kingship or queenship council’** means a council established and recognised for a kingship or queenship in terms of section 3A;”;
- (d) the insertion after the definition of “Minister” of the following definitions: 10
 “ **‘principal traditional community’** means a principal traditional community recognised as such in terms of section 2B;
 “ **‘principal traditional council’** means a council established and recognised in terms of section 3B; 15
 “ **‘principal traditional leader’** means a traditional leader—
 (a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law;
 (b) recognised as such in terms of section 10A; and 20
- (e) the substitution for the definition of “traditional council” of the following definition:
 “ **‘traditional council’** means a council established in terms of section 3 and includes a traditional sub-council established in terms of section 4B;”. 25

Substitution of heading to Chapter 2 of Act 41 of 2003

2. The following heading is hereby substituted for the heading to Chapter 2 of the principal Act:

“KINGSHIPS OR QUEENSHIPS, PRINCIPAL TRADITIONAL LEADERS, PRINCIPAL TRADITIONAL COMMUNITIES, TRADITIONAL COMMUNITIES, PRINCIPAL TRADITIONAL COUNCILS, KINGSHIP OR QUEENSHIP COUNCILS AND TRADITIONAL COUNCILS”. 30

Insertion of section 2A in Act 41 of 2003

3. The following section is inserted in the principal Act after section 2: 35

“Recognition of kingships or queenships

- 2A.** (1) Subject to subsection (2), a number of traditional communities that are grouped together may be recognised as a kingship or queenship if they—
- (a) are recognised as such in terms of applicable provincial legislation; 40
 (b) each have a recognised traditional council with a defined area of jurisdiction in terms of applicable provincial legislation;
 (c) each have a senior traditional leader recognised in terms of the applicable provincial legislation;
 (d) recognise a recognised senior traditional leader, who is of higher status 45
 than the other senior traditional leaders in terms of custom and customary law, as their king or queen;
 (e) recognise themselves as a distinct group of traditional communities separate from principal traditional communities and all other traditional communities; and 50
 (f) have a system of traditional leadership at a kingship or queenship level.
- (2) The traditional communities applying for recognition as a kingship or queenship must have a proven history of existence, with a recognised senior

traditional leader of higher status as a king or queen in terms of customary law of succession.

(3) (a) The President may, by notice in the *Gazette*, on the recommendation of the Minister and after consultation with the relevant Premier, the provincial house of traditional leaders in the relevant province, the national house of traditional leaders and the senior traditional leaders of traditional communities who fall under the kingship or queenship being applied for, recognise a kingship or queenship envisaged in subsections (1) and (2) as a kingship or queenship.

(b) The President may—

- (i) direct the Minister to conduct the consultation referred to in paragraph (a) in his or her stead; and
- (ii) prescribe a fixed period within which the Minister must finalise the consultation regarding the recognition of a kingship or queenship envisaged in subsections (1) and (2).

(4) A kingship or queenship 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;
- (b) promoting equality; and
- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

(5) The withdrawal of the recognition of a community as a kingship or queenship as provided for in this Act, may only be considered where—

- (a) the majority of traditional communities under the jurisdiction of the kingship or queenship concerned request the President that the recognition of their kingship or queenship be withdrawn; and
- (b) the President, on good cause shown, determines that the withdrawal of such a kingship or queenship is necessary.

(6) The President may, before taking a decision in terms of subsection (5), cause an investigation to be conducted.

(7) The withdrawal of the recognition of a community as a kingship or queenship must be done by the President on the recommendation of the Minister after consultation with the kingship or queenship council, the Minister, the National House of Traditional Leaders, the relevant Premier and the provincial house of traditional leaders concerned.

(8) The withdrawal of a kingship or queenship must be done by way of a notice in the *Gazette*.

“Recognition of principal traditional communities

2B. (1) A number of traditional communities that are grouped together may be recognised as a principal traditional community if they—

- (a) are recognised as such in terms of applicable provincial legislation;
- (b) each have a recognised traditional council with a defined area of jurisdiction in terms of applicable provincial legislation;
- (c) each have a senior traditional leader recognised in terms of the applicable provincial legislation;
- (d) recognise a recognised senior traditional leader, who is of higher status than the other senior traditional leaders in terms of custom and customary law, as their principal traditional leader;
- (e) recognise themselves as a distinct group of traditional communities separate from kingships or queenships and all other traditional communities; and
- (f) have a system of traditional leadership at a principal traditional leadership level recognised by other traditional communities.

(2) The traditional communities applying for recognition as a principal traditional community must have a proven history of existence recognizing a senior traditional leader of higher status as a principal traditional leader in terms of customary law of succession.

(3)(a) The Premier may, by notice in the *Provincial Gazette*, after consultation with the provincial house of traditional leaders, and the senior traditional leaders who form part of the principal traditional community being applied for, recognise the traditional communities envisaged in subsections (1) and (2) as a principal traditional community.

(b) The Premier may—

- (i) direct the member of the Executive Council responsible for traditional affairs to conduct the consultation referred to in paragraph (a) in his stead; and
- (ii) prescribe a fixed period within which the Member of the Executive Council responsible for traditional affairs must finalise the consultation regarding the recognition of a principal traditional community envisaged in subsections (1) and (2).

(4) A principal 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;
- (b) promoting equality; and
- (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

(5) The withdrawal of the recognition of a community as a principal traditional community as provided for in this Act, may only be considered where—

- (a) the majority of traditional communities under the jurisdiction of the principal traditional community concerned request the Premier that the recognition of their principal traditional community be withdrawn; and
- (b) the Premier, for good cause shown determines that the withdrawal of such a principal traditional community is necessary.

(6) The Premier may, before taking a decision in terms of subsection (5), cause an investigation to be conducted.

(7) The withdrawal of the recognition of a community as a principal traditional community must be done by the Premier after consultation with the provincial house of traditional leaders, and the senior traditional leaders who form part of the principal traditional community.

(8) The withdrawal of a principal traditional community must be done by way of a notice in the *Provincial Gazette*.”.

Amendment of section 3 of Act 41 of 2003

4. Section 3 of the principal Act is hereby amended by the substitution in subsection (2) for paragraphs (a) and (c) of the following paragraphs:

“(a) A traditional council **[may have no more than 30 members, depending on the needs of the traditional community concerned]** consists of the number of members determined by the Premier by formula published in the *Provincial Gazette*, after consultation with the provincial house, in accordance with the guidelines issued by the Minister by notice in the *Gazette*.”

(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 who is an *ex officio* member and chairperson of the traditional council, for a term of five years aligned with the term of office of the National House of Traditional Leaders, 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 aligned with the term of office of the National House of Traditional Leaders and who must constitute 40% of the members of the traditional council.”.