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CONSOLIDATED DRAFT SUMMARY OF ORAL AND WRITTEN SUBMISSIONS ON THE TRADITIONAL AND KHOISAN LEADERSHIP BILL [B23 – 2015]

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1. INTRODUCTION

In September 2015 the Department of Cooperative Governance and Traditional Affairs sent the Traditional and Khoi-San Leadership Bill (TKLB) to Parliament for processing. The Portfolio Committee on Cooperative Governance and Traditional Affairs began with a public consultation process on the Bill as required by legislation. Written and oral inputs were received in Parliament. Public hearings were also conducted in all the nine provinces as follows: Northern Cape (Kuruman, Uppington, Springbok, Kimberly); Western Cape (Parliament, Swellendam, Oudtshoorn); Eastern Cape (Umtata, East London, Graaf Reinet and Port Elizabeth); Northwest (Rustenburg, Mafikeng, and Vryburg); Free State (Phillipolis, Thabanchu, and Phuthaditjaba); KwaZulu-Natal (Vryheid, Hluhluwe, Pietermaritzburg, Kokstad); Limpopo (Thohoyandou, Polokwane); Mpumalanga (Nelspruit, Kwaggafontein) and Gauteng (Eersterust). The purpose of this document is to provide a summary of the issues raised by the public in relation to the Bill.

2. PRELIMINARY ISSUES

2.1. Consultation

- While some communities appreciated Parliament for consulting them on the Bill, some were not satisfied with the consultation process. Concerns included: late receipt of notices for public hearings; unavailability of copies of the Bill in the language spoken by the people; non-consultation with major Khoi & San stakeholders; non-visibility of public hearings on radio, television and newspaper media; and non-consultation with the Khoi-San communities and traditional leaders before the drafting of the Bill. Consequently, some members of the public felt that they were not sufficiently empowered to make meaningful inputs on the proposed legislation.

In this regard it was proposed that: more workshops be conducted on the Bill; that the Bill be sent to communities 14-21 days before a public hearing; door to door campaigns be undertaken; that the Polokwane meeting be renamed 'consultation with amakhosi', and not a public hearing - on the basis that the majority of the participants were representing traditional councils, which, in their present form, are illegal as they have not been reconstituted in line with the *Traditional Leadership and Governance Framework Act (2003)*; the period of the public hearing should be extended to allow sufficient consultation; and that Parliament should visit the Witbank community that missed the Kwaggafontein hearing due to misunderstandings regarding transportation.

2.2. Unrecognised traditional leaders

- The issue of unrecognised African traditional leaders (such as the Vhangona of Limpopo and the non-recognition of the wives of chiefs) was deemed to make it problematic to recognise the Khoi & San. It was proposed that these unrecognised



African traditional leaders should first be recognised before the recognition of the Khoi-San is contemplated.

2.3. Separation of Khoi-San from ‘African’ traditional leaders

- It was proposed that the Khoi & San issue should be treated separately from African traditional leadership issues, and that there should be separate Bills in this regard. To this end it was proposed that: the current Bill be accepted as the **Traditional Leadership Bill**, excluding the Khoi-San peoples/communities and that Government passes a separate Act similar to: the Norwegian *Saami Act of 12 June 198*; the Canadian *Bill C-132 of 1993*; the Panama *Comarca Act No.16 of 1953*; or the Danish *Home Rule Act of 1978*.
- At the same time there was a concern that the Khoi and San are also African, and should therefore not be treated separately because this would set the precedent that there should be a separate Bill for each of South Africa’s different ethnic groupings, as in the Apartheid era. The CRL Rights Commission in particular was concerned about the setting of traditional and Khoi-San groups apart as this may have unintended consequences that could pose a threat to unity and social cohesion.

2.4. Constitutional recognition

- There was a proposal that the recognition of the Khoi & San should be explicitly enshrined in the Constitution. Suggested in this regard was: the enactment of a mechanism similar to the Traditional Communities under the interim Constitution of 1993 that led to Chapter 3 and Chapter 12 of the Constitution; that this constitutional recognition be based on the objective and subjective criteria of the ILO Convention No.169 under self-identification, *Article 1(2)*; that this constitutional recognition be also given to the Khoi & San languages; that a Constitutional Amendment be effected with the establishment of Chapter 12A as an additional chapter in the Constitution; and that a Ministry of Indigenous Affairs specifically set up for the Khoi-San within the Constitution, be introduced as a Chapter 12A entity.

2.5. Financial implications

- The Financial and Fiscal Commission (FFC) has noted that the areas with financial implications are indicated in the Bill without specifying the actual costs/finances – adding that the Bill will bear a continuous increase in the spending and the introduction of additional traditional leaders will shift the budget above its normal path. The FFC therefore proposed that the costing is key even before the Bill becomes law.

3. TITLE OF THE BILL

- The title of the Bill was considered inappropriate on the basis that: it divides the Khoi & San from other traditional leaders/African people; and that it emphasises leaders as opposed to the broader community. It was recommended that the title be changed to: **Traditional, Khoi & San Leadership Bill** to minimise this



perceived division; **Traditional Leadership Bill** to accommodate the view that Khoi-San leaders are considered traditional leaders and should not be segregated as was the case with the Group Areas Act; **African Natives Leadership Bill** to make provision for every community that deems itself traditional; **African Traditional Leadership** to recognise that the Khoi-San are also African; **Indigenous People's Bill** to acknowledge that the Khoi and San are indigenous to the Southern African region; and **Khoisan Traditional Bill** to place emphasis on the Khoi-San community as whole instead of leaders only.

- A concern was raised in relation to the inscription in the Bill's sub-title, namely, '*the English text is the official text of the Bill.*' This was understood to render texts in languages other than English 'unofficial'.

4. PREAMBLE

- A suggestion was made that the preamble to the Bill should include the recognition of Kings and Queens, and not only Kingship and Queenship Councils.

5. CHAPTER 1: INTERPRETATION, APPLICATION, AND PRINCIPLES

5.1. Definitions and application

- *Section 1(1)* – “**Area of Jurisdiction**” - A concern was raised that the definition of this term did not specify whose responsibility it was to determine the area of jurisdiction.

“**Branch**” - It was proposed that this term be changed to ‘**clan**’ as the Khoi-San community was not a political party.

“**Headmen or headwomen**” - It was proposed that this term be changed to ‘**Junior traditional leader**’.

“**Traditional Leader**” - ‘Royal leaders’ or ‘hosi, kgosi, inkosi’ were proposed as alternative designations to the term ‘traditional leaders’ as the latter term was a colonial imposition.

- *Section 1(1)(b)* - “**Khoi-San**” - Concerns were raised with respect to the appropriateness of the term Khoi-San on the basis that: the term was not originated by the Khoi and the San but a product of colonial and Apartheid legislation; and that it was derogative. Furthermore, the limitation of the ‘Khoi-San’ definition to the Cape Khoi, Griqua, Koranna, Nama and the San, hindered the acknowledgement of the Cochoqua, Goranaiqua, Goran Haikona, the Hessequa, Ghainoqua, the Choragoqwe, and the Cobuqua, as entities in the own right.
- *Section 1 (5)* - Clarity was sought on why the Bill does not give or mention the status of the Khoi-San as a first nation, and it was insisted that the Bill must recognise the Khoi-San as the first nation in South Africa, in terms of Convention



169 of the United Nations Declaration of the Rights of Indigenous People. In this regard, it was suggested that, in the entire Bill (including the title), the use of the term ‘traditional’ must be replaced by the word ‘indigenous’; and that that this clause be deleted.

- There are other terms used in the Bill that were seen to be in need of definition, namely, “**Investigative Committee**” (as contemplated in *Section 12(6)(a)*), and “**Deputy Traditional Leader**” (as contemplated in *section 14(1)*).
- The Bill was said to be not clear on the question of ‘opting in’ or ‘opting out’ of traditional leadership by communities who do not want to be part of the institution. It was proposed that the Bill should provide for the option not be part of the institution of traditional leadership, as is the case for the Khoi-San (in terms of the Bill, a person is not automatically Khoi-San because they live in a particular area, and this apparently provides a potential template for the recognition of all traditional groupings, which does not rely on the boundaries of the former Bantustans as a default option). A principle of self-affiliation and free choice of membership of traditional leadership would arguably affirm the convergence of two systems of elected, representative democracy, and the indigenous African version of democracy.
- It was further observed that the Bill provides for the recognition of Khoi-San communities, leaders and councils without reference to territorial jurisdiction, while the rest of other traditional leaders have territorial jurisdiction. Recognition without a concomitant provision for land ownership was deemed meaningless, as the recognition of the Khoi-San cannot be separated from the question of land. In this regard, it was proposed that the process of Khoi-San recognition should also involve the Department of Rural Development and Land Reform; that section 25(7) of the Constitution be changed to accommodate the fact the Khoi & San were disposed of land before 19 June 1913; and that an exception be made to extend land claims to 1652.

5.2. Guiding principles

- *Section 2(1)* – This section emphasizes that traditional leadership structures must transform and adapt customary law and customs relevant to the application of the Bill (when it becomes an Act) so as to comply with the relevant principles contained in the Bill of Rights in the Constitution, in particular by ... (here the CRL Rights Commission proposes the insertion *(d)* promoting and protecting the rights of cultural, religious and linguistic communities).

6. CHAPTER 2: LEADERSHIP AND GOVERNANCE

6.1. Part 1: Traditional and Khoi-San communities

- Reference to the Khoi-San as a ‘community’ was deemed problematic because it distorted their status as a nation.



- *Section 3(1)* – This section sets out the criteria for the recognition of kingship or queenship, traditional community, headmanship or headwomanship and provides that traditional communities that are grouped together may be recognised as a kingship or queenship if they fulfil certain criteria. There was a concern that the ‘grouping together’ seeks to introduce the ‘deceitful manoeuvres’ contained in both the *Native Administrative Act of 1927* and the *Black Authorities Act of 1951* that saw African communities being coerced to form tribes under illegitimate chiefs.

Some Khoi-San communities and individuals rejected the recognition criteria on the basis that: the Khoi-San were the first nation and therefore did not need to apply for recognition; the Khoi-San are already recognised in the Constitution in terms of Chapter 12; there were no recognition criteria for other ethnic groups, and the National Khoi-San Council (NKC) when it was established; the recognition criteria do not take into account the historical realities of the Khoi-San (namely that their culture, distinctiveness and uniqueness were bastardised by colonialist and the Apartheid regime over four centuries), an oversight that can be corrected by adopting a restorative approach (meaning the restoration of Khoi-San heritage sites, languages and territories) that will address the root causes of Khoi-San vulnerability in line with the Constitution; and that the Khoi-San were not in a position to locate themselves geographically to fulfil the criteria for recognition. It was therefore recommended that the words ‘history or proven history’ (*section 3(1)(e)*) be deleted from the Bill.

For those who accepted criteria for recognition, it was not considered appropriate for the Premier to have decision-making powers on recognition (and withdrawal of recognition) as this would place the Khoi-San in a vulnerable position. Historical evidence was cited in respect of the inconsiderate attitude of some Premiers towards Khoi and San communities. It was recommended that: these powers be vested in the President of the Republic; the national Minister; in the traditional leaders themselves; or in a Commission of ‘natives’ selected from all nine provinces with all the know-how and expertise. It was urged that if the Premier remains vested with decision-making powers on recognition, there must be a clause that requires him/her to take into account the forces of history the Khoi-San were subjected to, should this be a reason for failing to meet any of the criteria. Where a community is refused recognition, there should be an appeal mechanism for administrative review.

- *Section 3(1)(d)* - This section provides that traditional communities that are grouped together may be recognised as a kingship or queenship if, among other things, they recognise as their king or queen, a specific recognised senior traditional leader who, in terms of custom and customary law, is of a higher status than the other senior traditional leaders. It was submitted that this provision is deliberately ambiguous: it does not clarify the ‘customs and customary law’ in terms of which traditional communities should apply the recognition, and what is meant by ‘higher status than the other senior traditional leaders.’
- *Section 3(1)(f)* – In terms of this section, traditional communities that are grouped together may be recognised as a kingship or queenship if, among other things, they



have a system of traditional leadership at a kingship or queenship level. There was a concern that this provision signals the end of evolution of traditional communities to a kingship/queenship level in that if this group of traditional communities do not have a system of traditional leadership at a kingship/queenship level, then they cannot apply for recognition as kingship/queenship. It was therefore suggested that this section be removed from the Bill.

- *Section 3(4)(c)* – This subsection provides that a community may be recognised as a traditional community if it, among other things, recognises itself as distinct traditional community with a proven history of existence, from a particular point in time up to the present, distinct and separate from other traditional communities. An objection similar to that expressed in respect of *section 3(1)(e)* pertaining to the recognition criteria for Khoi-San communities, was raised. It was argued that groupings who were subjected to decades of government manipulation during the processes of Bantustan consolidation are unlikely to be able to demonstrate ‘a proven history of existence’ that is ‘distinct and separate.’
- *Section 3 (8) (a)* – This section provides that a portion of a traditional community that meets the appropriate recognition criteria may request the relevant traditional council to apply to the Premier concerned for the recognition of this portion as a headmanship or headwomanship. It was proposed that the Royal Council, rather than the traditional council should make the application. This would require the insertion of a definition of Royal Council *as close relative to the King or Queen, Principal Traditional Leader and Senior Traditional Leader, who are close uncles and aunts who are related through bloodline.*
- *Section 5(1)(a)* – This section provides that a community may apply to the Premier concerned to be recognised as a Khoi-San community if it meets certain criteria, including a history of self-identification by members of the community concerned, and a proven history of coherent existence of the community from a particular point in time. It was objected that such criteria penalise the Khoi-San for having been forcibly labelled Coloured, while also failing to take into consideration the unique and violent nature of apartheid on the Khoi-San. It was proposed that these criteria should instead reflect the historical trajectory of the Khoi-San community within the South African historical context, including the consideration that the apartheid system outlawed their culture and forced them into becoming labourers and farm workers. In this regard it was suggested that the Khoi-San community recognition criteria be amended to take a restorative approach, using the Status Quo reports as a guiding standard.

6.2. Part 2: Traditional and Khoi-San leaders

- *Section 7 (1) (b)* - The Bill allegedly recognises only two Khoi-San leadership positions - Senior Khoi leader and branch head – and is silent on other positions such as Kingships and Queenships, while it recognises four level of leadership for other African traditional communities. This is viewed as discriminatory and perpetuating social inequality as these different levels of recognition also imply huge income gaps between the various positions. It was therefore recommended that there must be no more than



10 percent difference in the income gap between the highest and lowest paid leadership positions. The position of Senior Khoi leader was also understood to be improper, allegedly because throughout the history of the Khoi-San communities there were Paramount Chiefs, which were regarded as Kings and Queens. Another concern raised in relation to the recognition of the branch head position related to its relationship to the existing traditional community, namely whether the branch head will be able to pay allegiance to the existing Senior Traditional Leader.

- *Section 8 (a) (ii)* – This clause provides for the relevant royal family to, whenever the position of a king or queen is to be filled or the successor to a principal traditional is to be identified, apply to the President or relevant Premier for the recognition of the person identified to fill the position. There was a recommendation that the application be lodged with the Advisory Committee on Khoi-San Matters.
- *Section 9 (1) (a)* – This sub-section provides that the recognition of a king or queen, principal traditional leader, senior traditional leader, headman or headwoman, must be withdrawn if he or she has been convicted of an offence with a sentence of imprisonment for more 12 months without the option of a fine. It was submitted that this section needs to clarify whether this should apply before or during the reign. It was also proposed that the sanction period should be more than two years' conviction without an option of a fine.
- *Section 11 (3)(b)(ii)* – This section provides that, after following the relevant procedures, the Premier may withdraw the recognition of the relevant senior Khoi-San leader or branch head, or refuse to withdraw such a recognition. It was proposed that the National House of Traditional Leaders should instead resolve this through its dispute resolution mechanisms.
- *Section 14 (1)* – This section provides that any king, queen, principal traditional leader, senior traditional leader, headman or headwoman who occupies a hereditary position must, with the concurrence of the relevant royal family and within the stipulated period (60 days), identify a deputy to act in his or her stead whenever he or she becomes a traditional leader, elected as a member of a provincial legislature, National Assembly, National Council of Provinces, full-time member in any house of traditional and Khoi-San leaders, or is employed on a full-time basis by any employer. It was proposed that it should not be mandatory or compulsory, but optional for the traditional leader to appoint a deputy. In this vein the word 'must' is recommended for change to 'may.'
- *Section 15(2)* – This section provides for the Minister, after consultation with all Premiers, to determine the resources to be made available to traditional and Khoi-San leaders, as may be necessary to enable them to perform their functions effectively. It was proposed that it should not be the prerogative of the Minister to determine the resources, but should be compulsory for him to ensure that there is uniformity in respect of tools of trade for traditional leaders.

6.3. Part 3: Traditional and Khoi-San councils



- *Section 16(2)(c)(i) &(ii)* – Many members of the public criticised the determination that membership of a kingship or queenship council, principal traditional council or traditional council should comprise 60 percent of traditional leaders and members of the traditional community selected by the relevant traditional authority, while 40 percent of the members are elected. It was said that this amounted to a dictatorship. It was suggested that this should be vice-versa, with 60 percent of members elected, and 40 percent selected, for the reason that traditional authorities are numerically inferior to community members. In other words, there was no test case indicating that traditional leaders and royal families constitute larger portions of traditional communities and thus have latitude to select more people to councils than those elected by communities. Some of those who accepted the formula felt that the 40% to be elected must have historical experience from the Khoi and San communities. It was further suggested that this clause should also consider the gender dimension.
- *Section 17(1)(b)* – This section empowers the Premier to determine, after consultation with the main traditional council, the number of members, which a traditional sub-council should consist of. Some members of the public felt that the Premier cannot determine the size of the sub-council.
- *Sections 19(2)(b) & 20(2)(b)* – These sections provide that a kingship or queenship council or principal traditional council and a traditional and Khoi-San council must have its financial statements audited by the Auditor-General and submit such audited statements to the Premier within one month from the date of receipt thereof.

The Office of the Auditor-General of South Africa (AGSA) was concerned about these requirements because (a) the current wording of the Bill does not give the AGSA any discretion to decide which councils will be audited (b) Due to the small size and few activities of some of the councils, it is not cost beneficial for them to be subjected to an audit (c) there are more than 800 established traditional councils, and the AGSA does not have the capacity to audit all the traditional councils (d) the Bill prescribes a very short timeline of submission to the Premier (one month from the date of receipt), which is interpreted to mean that the auditor's report must be signed and issued within one month of receipt of financial statements – which provides the AGSA with a very short period of time to complete the audit (e) the Bill does not specify the periods that the AGSA is expected to audit, e.g. will it be retrospective and include all years not previously audited, or only prospective – an issue that must be considered in the context of a large number of councils that have never submitted financial statements for audit and a backlog that exists for many years (f) there are also existing legislation at national and provincial level that are not clear in terms of financial statement preparation and the auditing thereof e.g. the national legislation requires the preparation of financial statements while provincial legislation requires the preparation of accounts – which makes it unclear whether the Bill will replace the existing legislation or whether the existing legislation will remain.

In light of the above, AGSA recommended that (a) existing legislation should either be retracted or contradictions should be eliminated (b) national legislation should make a distinction between those councils for which complete financial statements are



required and those for which limited accounts (e.g. statement of income and expenditure) will be sufficient – a distinction that could be based on whether a council has assets and liabilities other than a bank account and who the users of the financial information are (c) when financial statements are required the specific financial reporting that should be applied should be specified (d) when a statement of income and expenditure is required it should be specified that the statement should be prepared on the cash basis, and a specific format or template should be provided for councils to complete (e) audit requirements should be clarified, and legislation should clarify whether an audit or for example agreed upon procedures should be performed on statement of income and expenditure (f) the legislation should deal with a mechanism to make the financial information publicly available, as a minimum to the national and provincial CoGTAs as well as the community members of each specific council.

The AGSA also suggested that, at this stage, the Bill removes reference to the AGSA and merely state that traditional councils will be audited without reference to who will conduct the audit.

- *Section 23 (2)* – This sub-section was criticised for attempting to usurp all control and power from the traditional community and give it to the Premier/Government – thus compromising the autonomy and independence of the traditional community.
- *Section 23(3)(b)* - This sub-section provides that, for the purposes of the management of any traditional council account, a Premier may, in consultation with the relevant Provincial Treasury, determine, among other things, (i) the financial systems and controls applicable to such account; (vii) the reporting requirements applicable to such account. The AGSA was concerned that the Bill does not address the following critical matters (a) the financial year and therefore the year-end date that is applicable to the 'account' for financial reporting purposes (b) the period of time within which financial statements should be submitted to the AGSA for audit (c) the financial reporting framework that should be applied.
- *Section 24 (6) (a)* – It was deemed inappropriate for the Premier to be given powers to monitor partnerships and agreements as contemplated in Section 24 of the Bill. It was suggested that this should be the prerogative of the people or community.
- *Section 25 (1)* – This section provides for national and provincial government departments to provide, on an optional basis, a role for a kingship or queenship council, principal traditional council, traditional council, Khoi-San council, traditional sub-council and traditional and Khoi-San leaders, provided that such a role may not include any decision-making power. It was proposed that it should be mandatory for national and provincial government departments to allocate this role, and therefore the word 'may' should be changed to 'must.' There was also a concern that the qualification around decision-making power would be meaningless when this section is implemented in practice, since no mechanisms have been included for government to monitor whether traditional institutions are making decisions that should actually be made by government.



It was also submitted that this section does not provide sufficient guidance on what roles can be given to traditional leaders and councils and what procedures should be used to do so – which is contrary to the principles of administrative law. In stating that the roles can be given in respect of ‘any’ of government functions, the section was also deemed to leave the nature and extent of these functions completely open to interpretation.

7. CHAPTER 3: HOUSES OF TRADITIONAL AND KHOISAN LEADERS

There were no submissions made in respect of the first part of Chapter 3.

Part 2: National House of Traditional and Khoi-San Leaders

- *Section 28 (3)* – This section provides that at least a third of the members of the National House must consist of women: Provided that this requirement cannot be met, the Minister must, after consultation with the Premiers concerned and the relevant provincial houses, determine a lower threshold in respect of the representation of women in the National House. It was proposed that this clause be redrafted to read as follows: *of the three persons who are senior traditional leaders or senior Khoisan leader elected by each province to represent them in the National House, one of them should be a female senior traditional leader/Senior Khoisan Leader, to the extent to which they are available.*
- *Section 34* – This section provides for the elections, powers, functions and conduct of the Chairperson and deputy Chairperson of the National House of Traditional and Khoi-San leaders. It was proposed that an additional clause 34 (13) be inserted as follows: (a) A Chairperson or Deputy Chairperson may be removed from office by the House, by a vote supported by a two thirds majority of the full complement of the membership of the House, and thereupon such chairperson or deputy chairperson must vacate his/her office subject to subsection c, (b) A chairperson or a Deputy Chairperson may be removed from office by the House on the grounds of misconduct, incapacity or incompetence, subject to subsection c (c) A decision to remove a chairperson or a deputy chairperson must be based on a finding to that effect by an investigative committee appointed by the House. However, there was a concern that the Khoi-San would be outnumbered in the House at a ratio of approximately 10 to 1. It was therefore recommended that there be two separate National Houses, or alternatively, a special voting formula to offset the perceived imbalance.
- *Section 35(2)* – This clause provides for the Minister to determine that certain members are full-time members of the National House. It was proposed that the Bill compels the Minister to show good cause for such a decision to avoid abuse of exercise of power.
- *Section 36(1)* – This section lists the duties of the National House of Traditional Leaders. One of these is to (a) cooperate with the provincial houses to promote, among other things, (viii) the transformation and adaptation of customary law and customs so as to comply with the provision of the Bill of Rights in the Constitution, in particular by



... (here the CRL Commission proposes the insertion (dd) promoting and protecting the rights of cultural, religious and linguistic communities).

- *Section 43 (1)* – This section provides for the National House to submit, annually, a report to the Minister in respect of its activities and programmes for the preceding financial year. The Minister must approve the report and submit it to Parliament. It was proposed that the word ‘approved’ be replaced by the word ‘note’, so that the clause reads as follows: *The National House must by no later than 30 June of each financial year, submit to the Minister a report in respect of the previous financial year, complying with the provisions of subsection (2), in respect of activities and programmes and must, within 30 days after the Minister has received the report, table it in Parliament.*

7.1. Part 3: Provincial and local houses of traditional leaders

There were no specific submissions made in respect of this part.

8. CHAPTER 4: COMMISSION AND ADVISORY COMMITTEE

- A concern was expressed that the Bill imposed discrimination by giving the non-Khoi-San Africans a high class Commission and the Khoi-San Africans a low class Advisory Committee. It was recommended that both the non-Khoi-San and the Khoi-San get a Commission of equal standing in all respects.
- It was observed that the Commissions put in place to assist the government with traditional disputes resolution (Ralushai, Kgatla and Nhlapho Commissions) have reportedly been ineffective thus far due to conflicts of interest. The Commissioners allegedly have interest (including mining interests) in the land of the people whose leadership disputes they intend to resolve.

8.1. Part 1: Commission on Traditional Leadership Disputes and Claims

- *Section 51* – A new sub-clause (3) is proposed for insertion in this section as follow: *if after the expiry of the term of the Commission, there are outstanding claims and disputes, the Minister, after consultation with the President, may extend the term of office for the Commission. The Premier may, after consultation with the Minister, appoint a committee to investigate and finalise disputes and claims, subject to the term of Office of the Commission.*

8.2. Part 2: Advisory Committee on Khoi-San Matters

- It was urged that: the Advisory Committee be independent and without bias; the Khoi-San Council be part of the Advisory Committee; and that the Advisory Committee must not just be academics but need to include members of the provinces that do have an in-depth study, oral history and knowledge of the Khoi-San history and leadership.
- It was also submitted that, instead of an Advisory Committee, a Statutory Commission with similar terms of reference to the NhlaphoApril Commission be appointed, subject



to recommendation from Khoi-San people's representatives regarding the composition and mandate of such a Commission.

9. CHAPTER 5: GENERAL PROVISIONS (REGULATIONS, DELEGATIONS, TRANSITIONAL)

- *Section 69 (3)* – This clause provides that the Minister may take the necessary steps to ensure that the provisions of the Bill are met. It was suggested that 'may' should be changed to 'must.'
- *Section 70* – This section describes a process for the transitional recognition of pre-existing community groups, councils and leaders. It has been argued, particularly by the Land and the Accountability Research Centre of the University of Cape Town, that the transitional process uses as its building blocks the so-called 'tribal' structures that were defined in law by successive undemocratic governments. It was recommended that these transitional provisions be scrapped 'as they legitimate apartheid tribal authorities and cover up their failed transformation under the Traditional Leadership and Governance Framework Act dispensation.'

10. SCHEDULE 1: CODE OF CONDUCT

- It was proposed that the heading of this schedule should be: "Code of Conduct for members of Houses/Councils."

11. SCHEDULE 2: OATH OR AFFIRMATION

There were no submissions made in respect of this schedule.

12. SCHEDULE 3: AMENDMENT OF LEGISLATION

12.1. Amendment of the Local Government: Municipal Structures Act, 1998

- *Section 81(2)(g)* is added to provide that the election and nomination of traditional and Khoi-San leaders for participation in municipal councils must commence at least one month prior to the date of election of a municipal council and must be completed prior to such date. The South African Local Government Association was of the view that it is very important that the term of office of the municipal councillors and the participating traditional leaders coincide, in order to ensure that the participating traditional leaders can be inducted in the municipal council and municipal affairs simultaneously with the newly elected councillors.
- *Section 81(4)(b)* – It was proposed that this section be amended to read as follows: *must attend and participate in any meeting of the municipal council and may, subject to the rules and orders of the municipal council and any ruling of the speaker of the municipal council, submit motions, make proposals and ask questions.*
- *Section 81(4)(d)* – It was proposed that this section be amended to read as follows: *is subject to the appropriate provisions of the Code of Conduct contained in Schedule 1*



to the Local Government: *Municipal Systems Act, 2000 (Act No.32 of 2000)*, the standing rules and orders of the relevant municipality as well as any ruling of the speaker of the relevant municipality.

- *Section 81(4)(f)* – It was proposed that this section be amended to read as follows: may, subject to the rules and orders of the municipal council and any ruling of the speaker of the municipal council, address the municipal council on –

- *Section 81(8)* – This section defines the roles of the traditional and Khoi-San leaders participating in municipal councils. SALGA was of the view that the following should also be included in the sub-section:

(l) Traditional leaders should inform the relevant municipality of land allocations done, in order for the municipality to be able to determine liability for rates and taxes in traditional areas;

(m) Traditional leaders should cooperate with the municipality and support it in the implementation of the Spatial Planning and Land Use Management Act, 2014 as well as the Spatial Development Framework;

(n) The actions, resolutions and plans of the municipality cannot be invalidated due to lack of participation of traditional leaders; provided that the municipality took reasonable steps to ensure such participation.

- *Section 81(13)* – This section provides that a participating leader may, from the budget of the relevant municipal council, be reimbursed for any out of pocket expenses. SALGA was concerned about the possibility of double benefits to participating traditional leaders. For example, in Mpumalanga and the Eastern Cape, traditional leaders already receive travel benefits, be it in the form of an allowance or petrol card. In addition, hereto, the municipality now also need to reimburse participating traditional leaders for attending council meetings. SALGA's further point of concern is the equity in treatment between the participating traditional leaders and councillors. Councillors are required to attend council meetings at own cost, except where they represent their local municipality in the district council, however traditional leaders will be reimbursed for attendance of council meetings.

13. SCHEDULE 4: REPEAL OF LEGISLATION

- Some traditional leaders were of the view that the *Traditional Leadership and Governance Framework Act of 2003* and the *National House of Traditional Leadership Act of 2009* be amended rather than repealed, and that there should be a separate Bill for Khoi-San leadership.