

REPUBLIC OF SOUTH AFRICA

**SELECT COMMITTEE AMENDMENTS
TO
TRADITIONAL AND KHOI-SAN
LEADERSHIP BILL**

[B 23B—2015]

*(As agreed to by the Select Committee on Co-Operative Governance
and Traditional Affairs (National Council of Provinces))*

[B 23C—2015]

ISBN 978-1-4850-0535-3

No. of copies printed 400

AMENDMENTS AGREED TO
 TRADITIONAL AND KHOI-SAN LEADERSHIP BILL
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CLAUSE 5

1. On page 10, in line 38, to omit “coherent”.

CLAUSE 24

1. On page 33, in line 52, after “and” to insert “, notwithstanding the provisions of any other law,”.
2. On page 33, from line 57, to omit paragraph (c) and to substitute:

“(c) is subject to—

 - (i) a prior consultation with the relevant community represented by such council;
 - (ii) a decision in support of the partnership or agreement taken by a majority of the community members present at the consultation contemplated in subparagraph (i); and
 - (iii) a prior decision of such council indicating in writing the support of the council for the particular partnership or agreement;”.

CLAUSE 33

1. On page 37, from line 52, to omit “during the sitting of Parliament”.

CLAUSE 34

1. On page 38, in line 40, to omit “consecutive”.

CLAUSE 63

1. On page 51, from line 12, to omit subsection (4) and to substitute:

“(4) (a) A tribal authority that, immediately before 24 September 2004, had been established and was still recognised as such, is deemed to be a traditional council contemplated in section 16 of this Act and must perform the functions referred to in section 20: Provided that such a tribal authority must be reconstituted to comply with the provisions of section 16(2) within two years from the date of commencement of this Act.

(b) If, prior to the commencement of this Act, any tribal authority was reconstituted as contemplated in paragraph (a), but such reconstitution did not comply with all the requirements of section 16(2), such tribal authority is deemed to be a traditional council and must, within two years of the commencement of this Act, be reconstituted in full compliance with the provisions of section 16(2).

(c) If the timeframes contemplated in paragraph (a) or (b) are not met, the Minister may, within one year after the timeframes have lapsed and after consultation with the relevant Premier, apply the

provisions of section 16(2) to ensure that such tribal authority or traditional council is constituted or reconstituted in accordance with the provisions of section 16(2).

(d) The provisions of section 16(5) apply to any constitution or reconstitution contemplated in this subsection.”

2. On page 53, in line 62, to omit “amend” and to substitute “either amend or re-enter into”.
3. On page 54, after line 2, to insert:

“(d) The provisions of this subsection do not apply to any partnership or agreement which, at the commencement of this Act, has been entered into in accordance with any enabling provisions of any other law.”
4. On page 54, in line 3, to omit “section” and to substitute “chapter”.

MEMORANDUM ON THE OBJECTS

1. From page 73, to amend paragraph 2.5 as follows:

“Clause 5 of the Bill makes provision for the recognition of Khoi-San communities and branches (please also see clauses 56 and 58 of the Bill). As mentioned earlier, this is the first time that statutory provision is made for the Khoi-San and therefore this provision and others in the Bill relating to the Khoi-San are all new. A community may apply to the relevant Premier to be recognised as a Khoi-San community if it meets certain criteria. The community must have a history of self-identification by members of the community as belonging to a unique community distinct from all other communities. It must observe distinctive established Khoi-San customary law and customs and has to be subject to a system of hereditary or elected Khoi-San leadership. Furthermore, the community must have existing distinctive cultural heritage manifestations and a proven history of [**coherent**] existence of the community from a particular point in time up to the present. The relevant community must also occupy a specific geographical area or various geographical areas together with other non-community members. These criteria differ slightly from the criteria for traditional communities mainly due to the unique circumstances and history of the Khoi-San. However, the criteria are necessary to ensure that only legitimate Khoi-San communities in terms of customary law and customs are considered for recognition.”
2. On page 79, to add the following to paragraph 2.26:

“2.26 As far as partnerships and agreements are concerned, clause 24 determines with who a council may enter into a partnership or agreement. It also contains specific requirements and makes provision for monitoring by the provinces. A council may only enter into a partnership or agreement if the relevant community has been consulted and the majority of community members present at such consultation has taken a decision in support of the partnership or agreement.”
3. On page 84, to add the following to paragraph 2.54(g):

“(g) Since the Bill introduces certain requirements for partnerships and agreements (see clause 24), it is important that existing partnerships and agreements be tested against such require-

ments. Therefore clause 63(22) determines that such partnerships and agreements must be reviewed by the relevant Premier within a period of three years from the date of commencement of this Bill. This will however not apply in respect of partnerships and agreements that, prior to the commencement of this Bill, has been entered into in accordance with enabling provisions contained in any other legislation.“