

EMBARGOED UNTIL TABLING IN THE NEGOTIATING COUNCIL

**TWENTY FOURTH REPORT  
OF THE TECHNICAL COMMITTEE ON  
CONSTITUTIONAL ISSUES  
TO THE NEGOTIATING COUNCIL**

**12 NOVEMBER**

**Preliminary draft**

**CHAPTER “10”**

(To be inserted as a new chapter after the Chapter on Local Government)

**TRADITIONAL AUTHORITIES**

**Indigenous law**

1. All matters pertaining to indigenous law or customary law shall be subject to regulation by law.

**Traditional authority and local government**

2. (1) All existing traditional authorities recognised by and instituted in accordance with indigenous law and legislation, shall continue to exist and exercise their powers and functions in terms of indigenous law as regulated by legislation. \*

\*Note: The following additional provision may be considered:

Traditional authorities may be established in accordance with indigenous law and in a manner prescribed by law.

- (2) There shall be an elected local government in the area of a traditional authority which shall be responsible for providing essential services in its area of jurisdiction.

- (3) The traditional leader of a traditional authority within the area of jurisdiction of an elected local government shall be an ex-officio member of that local government.
- (4) A chairperson of a local government shall be elected from amongst all members of such local government.
- (5) The procedures relating to the election of a local government referred to in subsection (2), the election of a chairperson and matters relating to the functioning of such local government shall be regulated by provincial legislation.

### **Provincial House of Traditional Leaders**

3. (1) A House of Traditional Leaders shall be established in each province for representatives of traditional authorities within such province where such authorities exist.
- (2) A House shall consist of as many representatives elected or nominated by traditional authorities as shall be prescribed by provincial law.
- (3)
  - (a) The House shall be entitled to advise the provincial legislature in respect of matters relating to indigenous law, tradition and custom.
  - (b) All provincial bills pertaining to traditional authority, indigenous law, tradition and custom, and any other matter having a bearing thereon, shall be referred to the House by the Speaker of the provincial legislature for its comments before the passing of such bill.
  - (c) The House shall indicate its support for or opposition to such bill within 30 days from the date of such referral.

- (d) If the House indicates that it is opposed to such bill, the provincial legislature shall not pass the bill before the lapse of a further period of 30 days from the date of receipt by the Speaker of such comment.
- (e) A provincial legislature shall enact laws to regulate the procedures applicable to the exercise of the powers and functions of the House in terms of this subsection.

#### **4. Council of Traditional Leaders**

- (1) A Council of Traditional Leaders shall be established, composed of representatives of traditional authorities and elected by an electoral college, constituted by the members of the Provincial Houses of Traditional Leaders referred to in section 3 (11 in accordance with the procedures prescribed by Act of Parliament.
- (2) The composition, terms of office, functions, procedures of the Council and all matters relating thereto shall be prescribed by Act of Parliament.
- (3) The Council shall advise the national government in respect of all matters relating to indigenous law, tradition and custom.
- (4) The President may seek the advice of the Council on any matter of national interest.
- (5) All parliamentary bills pertaining to tradition and custom and related matters, shall be referred by the Speaker, simultaneously with the submission of such bill to the Senate. to the Council for its comments.
- (6) The comments of the House shall indicate its support for or opposition to such bill within 30 days from the date of such referral.

- (7) If the Council indicates its opposition to the bill such bill shall not be passed by the Senate or be finally adopted before the lapse of a further period of 30 days from the date of receipt of such comment by the Speaker.
- (8) If the Council fails to comment within the period of 30 days it shall be deemed to support such bill.
- (9) If a bill is introduced in the Senate and not in the National Assembly the procedures prescribed in subsections (5), (6), (7) and (8) shall mutatis mutandis apply.
- (10) Procedures relating to the exercise of its powers and functions by the Council referred to in subsections (2) to (8) shall be prescribed by Act of Parliament.