

Province of the  
**EASTERN CAPE**

COOPERATIVE GOVERNANCE  
& TRADITIONAL AFFAIRS

## TRADITIONAL AFFAIRS BRANCH

### GUIDELINES FOR THE PARTICIPATION OF TRADITIONAL LEADERS IN MUNICIPAL COUNCILS



*Ikanva zliqaqambileyo!*

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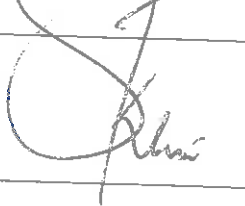
SIGN OFF

1. **Head of Department**

These Guidelines for the Participation of Traditional Leaders in Municipal Councils has been recommended by S. Khanyile in my capacity as the Head of the Department of Cooperative Governance and Traditional Affairs.

I am satisfied and concur with the content of those guidelines.

The development of those guidelines will ensure that the Department is able to exercise its powers in compliance with the law and guide decision-making in the organisation.

Signed	
Designation	Head of Department (S. Khanyile)
Date	25/03/2015

SIGN OFF

2. **Executive Authority**

The Department of Cooperative Governance and Traditional Affairs has unprecedented opportunity to improve the lives of the people by effectively rendering many services that it is expected to provide. We have envisaged a Department that has the required capacity to respond adequately to challenges of its people.

I therefore trust that these Guidelines for the Participation of Traditional Leaders in Municipal Councils will contribute towards the Department's endeavour to improving the living standards of our people, especially those who live in the rural areas of our Province.


Signed	
Designation	<b>MEC: Honourable Fikile Xasa Department of Cooperative Governance and Traditional Affairs</b>
Date	30/03/2015

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**CHAPTER A: GENERAL**

**1. DEFINITIONS OF TERMS**

In these guidelines unless the context indicates otherwise, the following expressions bear the meanings assigned to them below—

<b>TERM</b>	<b>DEFINITION</b>
<b>“Constitution”</b>	Constitution of the Republic of South Africa, 1996;
<b>“Councillor”</b>	A member of the municipal council;
<b>“District council”</b>	The municipal council of a district municipality;
<b>“Framework Act”</b>	The Traditional Leadership and Governance Framework Act, 41 of 2003;
<b>“Local House”</b>	Local House as defined in the Traditional Leadership and Governance Framework Act, 41 of 2003;
<b>“MEC”</b>	The MEC responsible for local government in the province;
<b>“MFMA”</b>	The Local Government : Municipal Finance Management Act, 56 of 2003;
<b>“Municipal Council or Council”</b>	A municipal council referred to in section 157 of the Constitution;
<b>“Municipal Structures Act”</b>	The Local Government: Municipal Structures Act, 117 of 1998;
<b>“Municipal Systems Act”</b>	The Local Government: Municipal Systems Act, 32 of 2000;
<b>“Partner”</b>	A person who permanently lives with another person in a manner as if married defined in the Traditional Leadership and Governance Framework Act, 41 of 2003;
<b>“sitting”</b>	A period when the council or committee in plenary
<b>“Traditional Leader”</b>	Any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position, and is recognised in terms of the Traditional Leadership and Governance Framework Act, 2003.
<b>“Traditional Constituency”</b>	Traditional councils falling within the area of jurisdiction of a municipality.

## 2. INTRODUCTION

- 2.1. With the ushering of a new democratic order in South Africa, it has been and still is the vision of the government that the institution of traditional leadership is transformed and supported so that it plays a role in socio-economic development and nation building. According to the White Paper on Traditional Leadership and Governance, 2003, the transformation of the institution of traditional leadership must, among other things promote sound relationships between itself and other spheres of government, act in partnership with municipalities by creating good relationships in order to enhance service delivery.
- 2.2. The role of the institution of traditional leadership is therefore not to usurp the role of government in traditional communities but to complement and support the government in improving the quality of life of the rural communities. The recognition of the institution of traditional leadership finds expression in section 211(1) of the Constitution of the Republic of South Africa. Furthermore, section 212(1) stipulates that national legislation may provide for a role for the institution of traditional leadership at local level on matters affecting local communities. Lastly, Section 81 of Local Government; Municipal Structures Act No.117 of 1998 and Section 4 of the Traditional Leadership and Governance Framework Act No.43 of 2003 give effect to Section 212(1) of the *Constitution* by allocating a role to the institution of traditional leadership on governance and development issues at the sphere of local government.

## 3. LEGISLATIVE AND REGULATORY FRAMEWORK

The legislative framework for the management of relations between municipal councils and traditional councils is contained in a number of pieces of legislation including but not limited to;

- 3.1. Sections 40 and 41 (1) (h) of Chapter 3 of the Constitution which deals with the core principles of co-operative government and intergovernmental relations in all spheres of government and organs of the state.

- 3.2. Section 81 of the Local Government: Municipal Structure Act, 1998 (Act No. 117 of 1998) which lays down the procedure for the participation of traditional councils through their leaders in the proceedings of municipal councils.
- 3.3. Schedule 6 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), deals with the identification of traditional leaders for the participation of traditional councils in the proceedings of municipal councils.
- 3.4. Section 121 and Schedule 3 of the Local Government: Municipal System Act, 2000 (Act No. 32 of 2000) which regulates the conduct of traditional leaders when participating in municipal councils.
- 3.5. Section 4 and 20 of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 No. 41 of 2003), provides for the function of traditional leaders and the guiding principles for the allocation of roles and functions of traditional councils and traditional leaders respectively.
- 3.6. The Intergovernmental Relations Act, 2005 (Act No. 13 of 2005) establishes a framework for national government, provincial governments and local governments to promote and facilitate intergovernmental relations.
- 3.7. Section 3 of the Municipal Finance Management Act, 2003 (Act No. 56 of 2003) deal with application of the Act to organs of the state to extent of their financial dealings with municipalities.
- 3.8. These guidelines are informed by section 81 of the Local Government: Structures Act, 1998 (Act No 117 of 1998) as amended and section 4 of the Traditional Leadership and Government Framework Act, 2003 (Act No.41 of 2003) which provides for the participation of traditional councils in municipal council proceedings.

#### **4. OBJECTIVES OF THE GUIDELINES**

The purpose of this guidelines/framework is to—

- 4.1. Provide simple and enabling framework that governs/regulates working relations between the municipal councils and traditional councils;
- 4.2. Give effect to the provisions of section 81 of the Local Government: Structures Act and section 4 of Traditional Leadership and Governance Framework Act;
- 4.3. Strengthen the relationship between municipal councils and traditional councils;



- 4.4. Enhance good governance, service delivery and stability in traditional community areas;
- 4.5. Promote partnerships between municipal councils and traditional councils;
- 4.6. Provide guidelines/framework for uniformity with regards to participation of traditional leaders in all affected municipalities throughout the Province;
- 4.7. Regulate and give guidance to the signing of service delivery agreements between municipalities and traditional councils;
- 4.8. Promote the allocation, roles and functions to traditional councils;
- 4.9. Promote joint mobilisation initiatives and public participation drives;
- 4.10. Facilitate full participation in all processes of municipalities including but not limited to integrated development plans, budget and spatial development; and
- 4.11. Ensuring seamless protocol mechanism between the parties.

## **5. VALUES AND GUIDING PRINCIPLES**

### **5.1. VALUES**

The institution of traditional leadership must be transformed to be in harmony with the Constitution and Bill of Rights so that—

- 5.1.1 Democratic governance and the values of an open and democratic society may be promoted; and
- 5.1.2. Gender equality within the institution of traditional leadership to be progressively advanced in line with custom.

### **5.2. GUIDING PRINCIPLES**

The institution of traditional leadership must—

- 5.2.1. Promote freedom, human dignity and the achievement of equality and non sexism;
- 5.2.2. Derive its mandate and primary authority from applicable customary law and practices;
- 5.2.3. Strive to enhance tradition and culture;
- 5.2.4. Promote nation building and harmony and peace among people;

- 5.2.5. Promote the principles of co-operative governance in its interaction with all spheres of government and organs of the state; and
- 5.2.6. Promote an efficient, effective and fair disputes resolution system, and a fair system of administration of justice, as envisaged in applicable legislation.

## **6. APPLICATION OF THE GUIDELINES**

These guidelines are applicable to all traditional leaders that are participating in municipal councils in terms of section 81 of the Local government: Municipal Structures Act.

## **7. STATUS OF TRADITIONAL LEADERS PARTICIPATING IN MUNICIPAL COUNCILS**

- 7.1. Identified traditional leaders have the general right to attend and participate in any meeting of the municipal council. He or she may subject to the rules and orders of the municipality and any regulation prescribed by the MEC, participate in debate, submit motions, make proposals and ask questions.
- 7.2. An identified traditional leader must hold a supreme office of authority among all the traditional leaders of a traditional authority and be a resident of the municipality.
- 7.3. Traditional leaders are not ex officio members of the municipal council and as such are not entitled to vote.
- 7.4. An identified traditional leader may become a member of the committee of a municipal council.
- 7.5. An identified traditional leader may not become an office-bearer of a municipal council.
- 7.6. An identified traditional leader may not be counted for the purpose of establishing a quorum in the municipal council.
- 7.7. An identified traditional leader shall retain his or her status of a traditional leader and shall not become a councillor by virtue of his or her participating in the proceedings of a municipal council.
- 7.8. An identified traditional leader has the right to address a municipal council on any matter which directly affects his or her area of jurisdiction.

7.9. An identified traditional leader may participate in the proceedings of a municipal council for the duration of the term of such council as contemplated in section 24 of the Structures Act.

## **8. ROLES AND RESPONSIBILITIES OF TRADITIONAL LEADERS PARTICIPATING IN MUNICIPAL COUNCILS**

8.1. Traditional leaders participating in the proceedings of a municipal council have the following functions—

- (a) Influencing municipalities in embracing and promoting heritage, language, customs and traditions;
- (b) Supporting municipalities in the identification of community needs;
- (c) Facilitating the involvement of traditional communities in the development and reviewal of integrated development plans (IDPs) of a municipality concerned;
- (d) Promoting indigenous knowledge system for sustainable development;
- (e) Influencing municipalities in the developing programmes that assist in curbing initiation deaths during initiation seasons, working hand in hand with all relevant stakeholders involved in the initiation programme;
- (f) Influencing municipalities in developing moral regeneration programmes and ensure that municipalities commit to the incorporation of these programmes in the plans;
- (g) Alerting any relevant municipalities of any hazard or calamity that threatens their areas of jurisdiction and contribute to disaster management programmes.

8.2. In addition the above roles, identified traditional leaders have the responsibility to—

- (a) attend all council or committee meetings;
- (b) promote the idea of co-operative governance, integrated development planning, sustainable development and service delivery;
- (c) report or provide feedback to traditional leaders from their respective constituencies at least once per quarter;
- (d) compile a report on their participation in municipal councils and submit the same to the Provincial House.

8.3. An identified traditional leader/s may not—

- (a) request other member of his or her traditional council or any person to participate in the proceeding of the council in his or her behalf;
- (b) absent himself or herself from attending sittings or meetings of the council or that of a committee without informing the relevant authority (office of the Speaker and a traditional leader designated as a coordinator of all identified traditional leaders of a municipality concerned;
- (c) boycott proceedings of the council or that of a committee without consulting and informing members of his or her constituency, the Provincial House and the MEC; or
- (d) request the intervention of the MEC on the challenges relating to their participation in municipal councils without consulting the Provincial House.

## **CHAPTER B: RELATIONSHIP BETWEEN MUNICIPAL COUNCILS AND TRADITIONAL LEADERS PARTICIPATING IN MUNICIPAL COUNCIL PROCEEDINGS**

### **9. RELATIONSHIP BETWEEN MUNICIPAL COUNCILS AND TRADITIONAL LEADERS**

- 9.1. The municipality and traditional leaders participating in municipal councils must respect the status, roles, powers and functions of each other as public office bearers so as to give effect to the principle of co-operative governance.
- 9.2. The municipality and traditional leaders participating in municipalities must co-operate with one another in mutual trust and good faith by—
  - (a) fostering sound working relations with one another;
  - (b) assisting and supporting one another in the execution of their roles and responsibilities;
  - (c) development of a communication strategy and mutually agreed protocol for information sharing, co-ordination and consultation purposes;
  - (d) adopting agreed upon procedures and internal disputes resolution mechanisms;
  - (e) participating traditional leaders remaining non-partisan;
  - (f) Identification of a traditional leader to coordinate all activities and ensuring meaningful participation and attendance;
  - (g) advising the Provincial House of traditional leaders of any conduct contrary to the applicable code of conduct and ethics such conduct shall be dealt with in

terms of the code of conduct as envisaged in the Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005).

- 9.3. The council (municipality) through office of the Speaker must ensure that identified traditional leaders are provided with the notice of the sitting or meeting as well as other necessary documents in advance, to enable them to familiarise themselves with the agenda of the such sitting.
- 9.4. The MEC responsible for Traditional Affairs together with the chairperson of the Provincial House must be informed of any dispute between the municipality and traditional leaders participating in municipalities before approaching a court of law.

#### **10. ACCOUNTABILITY OF TRADITIONAL LEADERS PARTICIPATING IN MUNICIPAL COUNCILS**

- 10.1. Traditional leaders participating in municipal councils must conduct themselves in line with the code of conduct provided in Schedule 5 of the Local Government: Municipal Structures Act.
- 10.2. Traditional leader participating in municipal councils must table reports of their meetings at least once a month at the meeting of the traditional constituency and local house concerned.
- 10.3. The meeting shall be held at the seat of the municipality.

#### **11. SUPPORT AND CAPACITY BUILDING TO TRADITIONAL LEADERS PARTICIPATING IN MUNICIPAL COUNCILS**

The department and municipalities shall support and strengthen the capacity of traditional leaders participating in municipal councils by providing skills development programmes and any other support deemed reasonable to make their participation effective.

#### **12. CODE OF CONDUCT FOR TRADITIONAL LEADERS PARTICIPATING IN MUNICIPAL COUNCILS**

**General conduct of traditional leaders**

A traditional leader must—

- (a) perform the functions of the office in good faith, honestly and in a transparent manner; and
- (b) at all times in the best interests of the municipality and in such a way that the credibility and integrity of the municipality are not compromised.

**1. Attendance at meetings**

An identified traditional leader must attend all meetings of the municipal council and that of a committee of which he or she is a member and must remain in attendance, except when—

- (a) leave of absence is granted in terms of applicable law or as determined by the rules and orders of the council; or
- (b) a traditional leader is required in terms of the code of conduct not to attend the meeting.

**2. Disclosure of interests**

(1) An identified traditional leader must—

- (a) disclose to the municipal council, to any committee of which he or she is a member of any direct or indirect personal or private business interest that a traditional leader, a spouse, partner or business associates of a concerned traditional leader may have in any matter before the council or the committee; and
- (b) withdraw from the proceedings of the council or committee when that matter is considered by the council or committee, unless the council or committee decides that the traditional leader's direct or indirect interest in the matter is trivial or irrelevant.

(2) An identified traditional leader who or whose spouse, partner, business associate or close family member, acquired or stands to acquire any direct benefit from a contract concluded with the municipality, must disclose full particulars of the benefit of which such a traditional leader is aware at the first meeting of the municipal council at which it is possible for the traditional leader to make the disclosure.

- (3) This section does not apply to an interest or benefit which a traditional leader, or a spouse, partner, business associates or close family member has or acquires in common with other residents of the municipality.

### **3. Personal gain**

- (1) An identified traditional leader may not use the position or privileges of a traditional leader or confidential information obtained as a traditional leader participating in the proceedings of a municipal council for private gain or to improperly benefit another person.
- (2) Except with the prior consent of the municipal council or that of a committee, an identified traditional leader may not—
- (a) be a party to or beneficiary under a contract for—
    - (i) the provision of goods or services to the municipality; or
    - (ii) the performance of any remunerated work other than as a traditional leader for the municipality;
  - (b) obtain a financial interest in any business of the municipality; or
  - (c) for a fee or other consideration appear on behalf of any other person before the council or a committee.
- (3) If more than one quarter of the council objects to consent being given to a traditional leader in terms of sub-item (2), such consent may only be given to a traditional leader with the approval of the MEC responsible for Traditional affairs.

### **4. Declaration of interests**

- (1) An identified traditional leader must within sixty (60) days after being identified to participate in the proceedings of a municipal council declare in writing to the municipal manager the following financial interests held by such a traditional leader—
- (a) shares and securities in any company;
  - (b) membership of any close corporation;
  - (c) interest in any trust;
  - (d) directorship;

- (e) partnership;
- (f) other financial interests in any business undertaking;
- (g) interests in property;
- (h) subsidies, grants and sponsorships by any organisation;
- (i) employments and remuneration; and
- (j) pension

- (2) Any change in the nature or detail of the financial interest of an identified traditional leader must be declared in writing to the municipal manager annually.
- (3) Gifts receive by an identified traditional leader above the prescribed amount (as prescribed in terms of municipal rules and orders) must also be declared in accordance with sub-item (1).
- (4) A municipal council must determine which financial interest completed in sub-item (1) must be made public having regard to the need for confidentiality and the public interest for disclosure.

#### **5. Rewards, gifts and favours**

An identified traditional leader may not request, solicit or accept any rewards, gifts or favour for—

- (a) persuading the council or a committee in regard to the exercise of any power, function or duty;
- (b) making a representation to the council or a committee of the council; or
- (c) disclosing privileged or confidential information.

#### **6. Unauthorised disclosure of information**

- (1) An identified traditional leader may not without the permission of the municipal council or that of a committee disclose any privileged or confidential information of the council or committee to any unauthorised person/s.
- (2) For the purpose of this item, privileged or confidential information of the council includes any information—



- (a) determined by the municipal council or committee to be privileged or confidential;
- (b) discussed in closed session by the council or committee;
- (c) disclosure of which would violate a person's right to privacy; or
- (d) declared to be privileged, confidential or secret in terms of law.

(3) This item does not derogate from the right of any person to access to information in terms of applicable national legislation.

#### **7. Intervention in administration**

An identified traditional leader may not, except as provided by law—

- (a) interfere in the management or administration of any department of a municipality unless mandated by council;
- (b) give or purport to give any instruction to any employee of the municipality except when authorised to do so;
- (c) obstruct or attempt to obstruct the implementation of any decision of the council or that of a committee by an employee of the municipality; or
- (d) encourages or participate in any conduct which would cause or contribute to maladministration in the municipality.

#### **8. Council property**

An identified traditional leader may not, use, take, acquire or benefit from any property or asset owned, controlled or managed by the municipality to which he or she has no right.

#### **9. Duty of the chairperson of a municipal council**

- (1) If the chairperson of a municipal council, on reasonable suspicion is of the opinion that a provision of the code of conduct has been breached, he or she must—
- (a) authorise an investigation to establish facts and circumstances of the alleged breach;
  - (b) give an identified traditional leader a reasonable opportunity to reply in writing the alleged breach; and

(c) report the matter in the meeting of a council after paragraph (a) and (b) has been compiled with.

(2) A report in terms of sub-item 1 (c) is open to members of the public.

(3) The chairperson must report the outcome of the investigation to the MEC responsible for Traditional Affairs in the Province.

(4) The chairperson must ensure that each traditional leader is given a copy of the code of conduct and such a copy is made available in every room or place where the council or committee meets.

#### **10. Breach of the code of conduct**

(1) A municipal council may establish a committee to—

- (a) investigate or a finding on any alleged breach of the code of conduct; and
- (b) make appropriate recommendation to the council.

(2) If the council or special committee finds that an identified traditional leader has breached a provision of the code of conduct, the council may—

- (a) issue a formal warning to an identified traditional leader; or
- (b) request the MEC to suspend or withdraw the participation of an identified traditional leader in the proceedings of the municipal council.

(3) The MEC may appoint a person or committee to investigate any alleged breach of the provision of the code of conduct and make recommendations on whether the right of an identified traditional leader to participate in the proceedings of the municipal council should be suspended or withdrawn.

(4) In the absence of applicable provincial legislation, the Commission Act, 1947 may be applied to an investigation in terms of sub-item (3).

(5) If the MEC is of the opinion that an identified traditional leader has breached a provision of the code of conduct, and that such breach warrants a suspension or withdrawal of the right of an identified traditional leader to participate in the proceedings of the council, the MEC may—

- (a) suspend such an identified traditional leader for a period and conditions determined by him or her; or

(b) withdraw the participation of such affected identified traditional leader.

(6) Any investigation conducted in terms of this item must be done in accordance with the rules of natural justice.

### **13. QUALIFICATION FOR PARTICIPATION OF TRADITIONAL LEADERS IN MUNICIPAL COUNCILS**

13.1. A traditional leader qualifies for selection or election to participate in the proceedings of a municipal council if he or she—

(a) is above the age of 21 years;

(b) has been recognised as a traditional leader in accordance with the provision of section 18, 21, 22, or 23 of the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005)

(c) has not have been convicted of an offence and sentenced to more 12 months without the option of a fine;

(d) is not an unrehabilitated insolvent;

(e) is a South African citizen;

(f) is a member of a traditional council that has been established and recognised in accordance with section 6 of the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005)

(g) is an ordinary resident within the jurisdiction of a traditional council and that of a municipality concerned; and

(h) is able to read, understand and write the English language.

13.2. In addition to the above qualifications, a traditional leader must—

(a) be willing to abide with the protocol, by-laws, code of conduct and procedures that governs the proceedings of the council;

(b) be developmental in approach;

- (c) have a vast knowledge in traditional leadership and governance matters;
  - (d) be gender sensitive;
  - (e) accountable;
  - (f) be in good standing; and
  - (g) be of sober habits.
- 13.3. A traditional leader may not be identified for the purposes of participating in the proceedings of a municipal council in terms of section 81 of the Structures Act if he or she—
- (a) is under the age of 21;
  - (b) is not a South African citizen;
  - (c) is a member of untransformed traditional council;
  - (d) has been removed as a traditional leader in accordance with the relevant provision of the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005) or any similar provision contained in the Framework Act;
  - (e) has been convicted of an offence and is sentenced to more than 12 months without the option of a fine;
  - (f) is impaired to the extent that he or she cannot participate in the proceedings of the council;
  - (g) is an unrehabilitated insolvent or has entered into a compromised with his or her creditors;
  - (h) is a member of a municipal council;
  - (i) is a member of the Provincial Legislature;
  - (j) is a member of the National Assembly;
  - (k) is a permanent delegate in the National Council of Provinces; or
  - (l) is a full-time member of the Provincial House: Provided that if it is proven that there is an insufficient number of traditional leaders available within the jurisdictional area of a particular municipality, the MEC may consider traditional leaders who are full-

time members of the Provincial House: Provided further that such traditional leaders are ordinary residents of the municipality concerned.

- 13.4. An identified traditional leader may no longer participate in the proceedings of a municipal council or that of a committee if—
- (a) any of the circumstances contemplated in item 3 (a) to (l) become applicable to such a traditional leader;
  - (b) if he or she has tendered a resignation as an identified traditional leader; or
  - (c) has breached the code of conduct and the MEC has terms of applicable legislation or rule and orders removed such a traditional leader from participating in the proceedings of the municipal council or that of a committee.

#### **14. CRITERIA AND PROCEDURE FOR THE IDENTIFICATION OF TRADITIONAL LEADERS FOR PURPOSES OF SECTION 81.**

##### **1. Manner of identification**

If it comes to the notice of the MEC that one or more traditional councils, observe a system of customary within the area of a jurisdiction of a municipality, the MEC—

- (a) must inform the Provincial House of the maximum number of traditional leaders to be identified in terms of section 81 to participate in municipal councils of the municipality concerned;
- (b) must request the Provincial House to recommend which leaders of that traditional council or of those traditional councils can be identified for the purpose of section 81;
- (c) on receipt of the recommendations, or if no recommendation is received within 30 days after a request was made in terms of paragraph (b) has been made, may identify traditional leaders of a traditional council or traditional councils; and
- (d) if a traditional leader have been identified in terms of paragraph (c), must submit the names of those traditional leaders to the municipal manager of the municipality concerned.

**2. Guidelines for identification**

- (1) A traditional leader to be identified must—
  - (a) have been identified and recognised as a traditional leader in terms of the Eastern Cape Traditional Leadership and Governance Act, 2005 (Act No. 4 of 2005);
  - (b) be an ordinary resident within the area of the municipality concerned.
- (2) Traditional leaders who fall within the boundaries of a municipality must select or elect traditional leaders among themselves to participate in the proceedings of the council of the municipality concerned.
- (3) The Provincial House must convene consultative sessions within the affected municipalities for the selection or election purposes.
- (4) The Provincial House must facilitate the submission of names of all selected or elected traditional leaders to the MEC for gazetting.
- (5) Selection must be reached through consensus, but when no consensus is reached, an option of voting by show of hands must be explored.
- (6) Traditional leaders selected or elected for the purpose of section 81 may not exceed the maximum number of 20% of the total number of councillors of the municipality concerned in accordance with section 81 (2)(b) of the Local Government: Municipal Structures Act.
- (7) At least one-third (1/3) of the total number of traditional leaders selected or elected must be women.
- (8) The chairperson of the Provincial House or any designated person must convene and preside over a meeting or session convened for the purpose of selecting or election of traditional leaders to participate in the proceedings of the municipal council.
- (9) A nominated traditional leader must indicate in writing his or her acceptance or declining of the nomination.
- (10) The Provincial House must also provide the MEC with a list of traditional leaders who have not been identified to participate in municipal councils but eligible to participate in the proceedings of the municipal councils, as well as the order in

which such traditional leaders should be identified to fill any vacancy: Provided that such replacement will only take place—

- (a) when an identified traditional leader dies; or
- (b) when any of the circumstances referred to in item 13.4 becomes applicable.

(11) Whenever there is a vacancy in the municipal council emanating from the 20% membership of traditional leaders, the co-ordinator of the identified traditional leaders participating in the proceedings of the municipal councils concerned must, inform the Speaker of the Council and the Provincial House, to facilitate the filling of such a vacancy.

(12) Any vacancy which occurs 12 months prior to the end of the term of such municipal council shall not be filled.

## **15. ROLES AND RESPONSIBILITIES OF THE PROVINCIAL HOUSE**

The roles and responsibilities of the Provincial House include but not limited to the following—

- 15.1. facilitating the identification of traditional leaders for the purposes of participating in the municipal councils;
- 15.2. making recommendations to the MEC on the names of traditional leaders who should participate and the category of a municipality in respect of which such identified traditional leaders may participate;
- 15.3. facilitating the submission of the identified traditional leaders to the MEC for gazetting purposes;
- 15.4. facilitating and influencing the identification of at least one third (1/3) of women to participate in the proceedings of each municipal council;
- 15.5. facilitating the filling of vacancies which occurred as a result of death, resignation, removal or illness on the part of an identified traditional leader;
- 15.6. holding quarterly meetings with coordinators of identified traditional leaders of both district and local municipalities (municipal councils);
- 15.7. facilitating and monitoring quarterly meetings between identified traditional leaders and their constituencies for the purpose of reporting and feedback;
- 15.8. providing the necessary support and strategic intervention where there are challenges between identified traditional leaders and other members of the council through the office of the Speaker;
- 15.9. facilitating the intervention of the MEC in cases where the House is unable to resolve the challenges;

- 15.10. providing the necessary advice and support to identified traditional leaders in relation to council matters; and
- 15.11. compiling an annual report on the participation of traditional leaders and submit the same to the MEC for his or her consideration.

**16. ALLOCATION OF TOOLS OF TRADE AND PAYMENT OF OUT OF POCKET EXPENSES, BENEFITS AND ALLOWANCES TO IDENTIFIED TRADITIONAL LEADERS**

**16.1. TOOLS OF TRADE**

- (1) In respect of tools of trade, a municipality (municipal council) must provide an identified traditional leader/s with—
- (a) office space at the seat of a municipal council (municipal building);
  - (b) office furniture (including a desktop, printer and cartridges);
  - (c) stationery; and
  - (d) office telephone,

Provided that such facilities may only be used for work purpose related to such an identified traditional leader's responsibilities and duties, subject to applicable by-laws and relevant rules and orders of the municipality (municipal council) concerned.

- (2) A municipality may provide an identified traditional leader/s with a—
- (a) contract mobile cell phone;
  - (b) laptop or iPod; and
  - (c) study assistance,

Provided that the council has taken a resolution to provide identified traditional leader/s with such resources and that such resources must be used for work related purposes, responsibilities and duties whilst working or outside the office space; Provided further that the study or course to be undertaken by an identified traditional leader is related to the issues of governance (preferably at local level) and that the duration of the course is not more than three years.



## **16.2. PAYMENT OF OUT OF POCKET EXPENSES, ALLOWANCES AND BENEFITS**

### **16.2.1. OUT OF POCKET EXPENSES**

- (1) For the purpose of these guidelines out of pocket expenses refers to the actual and necessary expenditure incurred by an identified traditional leader in respect of—
  - (a) the use of own transport;
  - (b) public transport;
  - (c) parking; and
  - (d) toll-gate,when attending meetings or event arranged by a municipal council or a committee of such a council or any ceremonial or official duties which such an identified traditional leader has been requested by the council to attend, provided that such expenditure has been authorised by the municipality.
- (2) For the purposes of claiming out of pocket expenses, an identified traditional leader must complete the necessary forms or documentations and produce receipts with actual amount incurred in respect of the use of public transport, payment of parking and toll-gate/s.
- (3) A municipality may, by resolution of the council or any other measures, determine a flat rate or an amount payable to an identified traditional leader/s without a privately owned vehicle nor use it for official duties of the council or committee, but rather use a public mode of transport.

### **16.2.2. SUBSISTENCE ALLOWANCES**

- (1) Payment of subsistence allowances is intended to cover for the cost incurred by an identified traditional leader in respect of refreshments and of being absent overnight from the normal residence by such an identified traditional leader.
- (2) Payment and rates or amount to be paid in respect of subsistence allowance shall be done in accordance with applicable by-laws, approved policies or procedures used by the relevant municipality, on the submission of all necessary documentation by an identified traditional leader.
- (3) No claim shall be made where a meal (in the form of breakfast or lunch) has been provided at no expense on the part of identified traditional leader.

### **16.2.3. SITTING ALLOWANCES**

- 16.1. A municipality may pay an identified traditional leader a sitting allowance for his or her attendance of council sitting or meeting of the council or that of a committee: Provided that a notice for such sitting or meeting has been issued by the relevant authority.
- 16.2. The department has noted that municipalities are exploring various methods for the payment of sitting allowances to identified traditional leaders for example—
- (a) Some municipalities are paying identified traditional leaders a determined monthly stipend;
  - (b) Whereas some municipalities are paying identified traditional leaders a determined amount per sitting.
- 16.3. It is on the basis of the above that department encourages municipalities to continue paying sitting allowances to identified traditional leaders in accordance with the council resolution taken by the municipality concerned.
- 16.4. However, for the purpose of ensuring uniformity, the following amount in respect of the payment methods are recommended—
- (a) a minimum amount of **R3, 000.00** stipend per month; or
  - (b) A minimum amount of **R800. 00** per sitting.
- 16.5. A municipality (municipal council) may by resolution of the council, pay an amount higher than the proposed to identified traditional leaders for their attendance of council or committee meetings.

### **17. APPROVAL OF THE GUIDELINES**

These guidelines shall be approved by the Executive Authority on the recommendation of the Head of Department as per the updated departmental delegations.

**18. ADMINISTRATION OF THE GUIDELINES**

Responsibility and accountability for implementing the guidelines rests with the Head of Department and ultimately the Executive Authority.

**19. EFFECTIVE DATE OF THE GUIDELINES**

These guidelines shall become effective on the date it is signed by the Executive Authority (MEC) responsible for Cooperative Governance and Traditional Affairs.

**20. PROCEDURE OF THE GUIDELINES**

There is no separate procedure for the implementation of the guidelines as they will be incorporated into the daily activities of the management of all affected directorate's programmes. It is therefore critical that the management of affected programmes or directorates familiarise themselves with the contents of the guidelines