**CHAPTER 2**

**GOOD GOVERNANCE**

**2.7. PARTICIPATION OF TRADITIONAL LEADERS – AMAKHOSI COMMUNICATION AND PROTOCOL MANAGEMENT GUIDELINE**

**2.7.1 PURPOSE**

The purpose of the Guideline is to improve the management of amaKhosi communication and Protocol within KwaZulu-Natal municipalities.

2.7.2 **LEGISLATIVE MANDATE AND ENABLING POLICIES**

# **THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996**

1. Section 155(6)(a) of the Constitution entrusts provincial government with the responsibility through legislative or other measures to provide for the monitoring and support of local government in the province to perform their functions and manage their own affairs.
2. The Municipal Council has executive authority in terms of Section 156(1)(a) of the Constitution in respect of and has the right to administer the Local government matters listed in part B of schedule 4 and part B of schedule 5. A municipal council’s legislative authority is based on Section 156(2) of the Constitutions which contemplates that a municipal council may make and administer bylaws for the effective administration of the matters it has the right to administer.
3. In terms of 156(3) of the Constitution, the Bylaws of the municipality may not be in conflict with national or provincial legislation. A Municipal Council according to Section 160(1) of the Constitution makes decisions concerning the exercise of all the powers and the performance all the functions of the municipality. Section 7.2 of the Constitution compels the state to respect, protect, promote and fulfil the rights in the Bill of Rights. Moreover, Section 8.1 of the Constitution contemplates that the Bill of Rights applies to all law, and binds the legislature, the executive, the judiciary and all organs of state.
4. In terms of Section 39 (3) of the Constitution, the birth and legislative based rights of traditional leaders are protected under the principles of the Bill of Rights. Traditional leaders through these rights are legitimately entitled to govern and exercise authority in their communities. Moreover, Section 211(1) of the Constitution recognizes the status and role of traditional leadership, according to customary law, subject to the Constitution

**(b) WHITE PAPER ON LOCAL GOVERNMENT, 1998**

(i) Section 4.3 of the White Paper on Local Government, 1998 deals with the relationship between traditional leaders and local government. This Section is consistent with the Constitution as it provided in Section 164 that any other matter concerning local government not dealt with in the Constitution may be prescribed by national legislation or by provincial legislation within the framework of national legislation. The White Paper on Local Government sought to provide for a balance between the elected public representatives and the appointed public representatives and proposed a cooperative model for rural governance as suitable model for local government in those areas falling under traditional leadership.

(ii) The model provides for the representation of traditional leaders in municipal councils where traditional leaders attend and participate in meetings of municipal councils. Traditional leaders are expected to advise municipal councils on the needs and interests of their communities. It provided that additional functions can be included within the broad scope of their participatory role and that provincial government and legislatures will play a role in determining additional functions in line with the national framework provided by the model including determining the precise circumstances in which the model would apply.

(iii) The model seeks to enhance consultation, communication and cooperation between traditional institutions and municipalities. It conceptualised a relationship in which both the district and the local municipal councils inform and consult traditional leaders regarding municipal projects or programmes within the traditional leaders’ area.

**(c) LOCAL GOVERNMENT: MUNICIPAL STRUCTURES ACT 117 OF 1998**

(i) Section 81 of the Municipal Structure Act, 1998 was incorporated to provide for the participation of traditional leaders in municipal council proceedings and municipal affairs. It also imposes an obligation for municipal councils to consult and obtain views of traditional leaders on matters of service delivery and development affecting their areas prior to decisions being made. The consultation obligation is also expressed in Section 19(3) of the Municipal Structures Act;

. (ii) Section 81(4) of the Municipal Structures Act provides for the MEC responsible for Local government in the Province to regulate the participation of traditional leaders in municipal councils and prescribe their role in the affairs of municipalities. Accordingly, Provincial Notice 146 of 2015: the KwaZulu-Natal Regulations on the Participation and Role of Traditional Leaders in Municipal Councils and Municipalities was published in October 2015. The Regulations form part of this guideline document.

**(d) LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT, ACT NO. 32 OF 2000**

1. Section 2(c) requires a municipal council to function in its area in accordance with the political, statutory and other relationships between its political structures, political office bearers and administration and its community. Section 3(1) of the Municipal Systems Act, provides that Municipal Councils when exercising their executive and legislative authority will do so within the constitutional system of co-operative government envisaged in section 41 of the Constitution.
2. In this regard, Sections 41(h)(i) to (iv) contemplate that all spheres of government and all organs of state within each sphere are compelled to cooperate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, informing one another of, and consulting one another on, matters of common interest; and to co-ordinate their actions and legislation with one another. Moreover, Sections 41(h)(v) to (vi) require that agreed to procedures must be complied with and legal proceedings against one another must be avoided.
3. Section 4(3) of the Municipal Systems Act compels a municipality to respect the rights of citizens and those of other persons protected by the Bill of Rights in the exercise of its executive and legislative authority. Sections 17(2)(d and 29(1)(b)(iii) of the Municipal Systems emphasize the consultation element.

**(e) TRADITIONAL LEADERSHIP AND GOVERNANCE FRAMEWORK ACT (ACT NO. 41 OF 2003**

(i) The interrelations coordination responsibility for provincial and national government in relation to municipalities and traditional institutions is defined in terms of Section 5 of the Traditional Leadership and Governance Framework Act (Act No. 41 of 2003) and Section 10 of the KZN Traditional Leadership and Governance Act (Act No. 5 of 2005). These provisions require national and provincial government to promote partnerships between municipalities and traditional councils. There partnerships must be based on the principles of mutual respect and recognition of status and the roles of respective parties. The principles of co-operative governance must underpin and guide these partnerships.

(ii) It is also expected in terms of Section 11 of the KZN Traditional Leadership and Governance Act, 2005 that Provincial Government and the relevant municipality supports and strengthen the capacity of traditional councils to full-fill their functions. This provision implies that the municipality is given more responsibility to ensure that there is a cordial working relationship between the municipality and traditional institutions within the municipality as a jurisdiction.

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**2.7.3 APPLICATION**

# **(a) AMAKHOSI PROTOCOL**

## (i) **Standing Rules and Orders**

Municipalities should review the Standing Rules and Order to reflect the participation of traditional leaders. Rising for political office bearers can be managed to eliminate the discomfort on the part of traditional leaders. If the municipality maintains the rising protocol, various measures to accommodate the status of amaKhosi should be instituted.

Traditional leaders must be afforded the opportunity to express their views on matters affecting traditional communities before the Council meeting. Traditional leaders must also be afforded the opportunity to provide input and debate matters that are before the municipal council. The speakers list where such a system is used must reflect traditional leaders as well. Speakers should make an effort to ensure that council decisions comply with Section 81(3) of the Municipal Structures Act.

##  **(ii) Forms of address**

 Municipalities must acquaint themselves to the correct protocol as follows:

(aa) Should there be anything requiring reference to The King of the Zulus, His Majesty; the following can be used interchangeable:

• His Majesty

• His Majesty, The King

• Ngangezwelakhe

• Hlangalomhlabathi

• iNgonyama

• iSilo

• iMbube

• Ndabezitha

• Bayede

 (bb) Mother of the King should be referred to as Ndlovukazi.

 (cc) Wife of the King should be referred to as

• Ndlunkulu

• Can be addressed by her maiden surname e.g. Ndlunkulu Mathe

• Can be addressed by her Palace e.g. Ndlunkulu wakwaKhangela.

(dd) The Child of the King is should be referred to as:

• Izinyane

• Prince/Princess

(ee) Any relation of the King should be referred to as:

• Umntwana waseNdlunkulu

• Umntwana

• Ndabezitha

 (ff) Traditional leader/Inkosi should be referred to as

 • Inkosi

 • Inkosi YeSizwe

 • Inkosi YaseNdlunkulu

 • Inkosi (use clan name) e.g. Inkosi Nondaba

(Only the King can address iNkosi as iDuna). Also, only the King can be called Bayede.

 (gg) Not all AmaKhosi are to be addressed as Ndabezitha but only those whose clan name is Ndabezitha e.g. Zulu, Mbatha.

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 (hh) The Wife of iNkosi must be referred to as:

• Mama weSizwe

 (ii) Headman should be referred to as:

• Undunankulu

• Induna

**(iii) Order of precedence**

 (aa) The correct order of precedence in the municipal environment where there are indigenous leaders of the communities served by this government is crucial. In his 2018 State of the Province Address, the Premier of the Province, Mr T. W. Mchunu, greeted the Chairperson of the Provincial House of Traditional Leaders and members of the Executive Committee of the Provincial House of Traditional Leaders before Mayors and Councillors of local government.

 (bb) It is accordingly concluded from this approach that the correct order of precedence in a municipal environment where there are AmaKhosi in the midst of political office, recognition of AmaKhosi should take precedence.

 (cc) In this regard, the Order of precedence at Council meetings should be the Speaker who is presiding in the meeting and then “AmaKhosi, Mayor, Deputy Mayor, Councillors and officials”. The same Precedence should be observed during public events and ceremonies with necessary modifications depending on the dignitaries present.

## **Seating plan**

A seating plan must be made and designated seats must be reserved. Traditional leaders must be seated in the direct view of the Speaker or the Chairperson of a meeting so that he is able to see them when they raise their hands wishing to make an input during meetings.

## **(v) Protocol Offices**

(aa) Municipalities must ensure that traditional leaders have access to an office when they are within the municipal main office precinct.

(bb) Where meetings take place within the premises, these offices should be able to fulfill the caucus room function.

(cc) In this regard, these offices should be furnished with at least a table and chairs to be used during caucus meetings.

(dd) Traditional leaders must be attended to promptly when they arrive at the municipal office and should not be left wandering around unattended.

## **(vi) AmaKhosi Protocol Focal Officials**

(aa) Communication with AmaKhosi is a crucial aspect towards improving the relationship between municipalities and traditional leaders. In this regard, municipalities must appoint or assign responsibility to officials who act as a gateway for AmaKhosi to the Municipality. These officials should be entrusted with a responsibility to take care of all matters relating to AmaKhosi within the municipality.

(bb) These Officials will see to it that there is proper communication with AmaKhosi and that there is timeous delivery of notices of meetings to AmaKhosi. They must ensure that traditional leaders are featured on the Speakers List where such a system is used. They must coordinate all issues pertaining to AmaKhosi including the compulsory consultation before matters affecting traditional communities are tabled and decided in Council meetings.

(cc) They must facilitate the processes towards the payment of the out of pocket expenses in time and assist AmaKhosi with any inquiry. These AmaKhosi focal persons must ensure that issues relating to AmaKhosi in general are properly coordinated.

(dd) Protocol Focal Officials must ensure that traditional leaders are consulted prior to any public announcement and activities taking place in their arears. They must also ensure that there is intact and timeous consultation of traditional leaders in all programmes and projects affecting areas under the traditional governance system.