



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 175

1995

### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 17 of 1995: Traditional Authorities Act, 1995.

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## ACT

**An act to provide for the establishment of traditional authorities, the designation and recognition of traditional leaders; to define their functions, duties and powers; and to provide for matters incidental thereto.**

*(Signed by the President on 11 September 1995)*

### ARRANGEMENT OF SECTIONS

#### Section

1. Interpretation.
2. Establishment of traditional authorities.
3. Designation of chiefs.
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13. Remuneration of traditional leaders.
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### SCHEDULE

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

#### **Interpretation**

1. In this Act, unless the context otherwise requires -

“chief” means a chief of a traditional community designated in accordance with section 3 and recognised as such under section 6;

“communal area” means the geographic area habitually inhabited by a specific traditional community;

“customary law” means the customary law, norms, rules, traditions and usages of a traditional community in so far as they do not conflict with the provisions of the Constitution or of any other written law applicable in Namibia;

“designation” in relation to the institution of a traditional leader includes the appointment, election or hereditary succession to office of a traditional leader, and any other method of instituting a traditional leader, recognised under customary law;

“member” in relation to a traditional community means a person either or both of whose parents belong to that traditional community and includes any other person who by marriage to or adoption by a member of that traditional community or by any other circumstance, has assimilated the culture and traditions of that community and has been accepted by the community as a member thereof;

“Minister” means the Minister of Regional and Local Government and Housing;

“regulation” means a regulation prescribed under section 15;

“senior traditional councillor” means a senior councillor of a traditional community designated in accordance with section 4 and recognised as such under section 6;

“traditional community” means an indigenous homogeneous, endogamous social grouping of persons comprising of families deriving from exogamous clans which share a common ancestry, language, cultural heritage, customs and traditions, recognises a common traditional authority and inhabits a common communal area; and includes the members of that community residing outside the common communal area;

“traditional councillor” means a councillor of a traditional community designated in accordance with section 4 and recognised as such under section 6; and

“traditional leader” means a chief, senior traditional councillor or traditional councillor designated and recognised as such in accordance with the provisions of this Act, and by whatever traditional title named.

#### **Establishment of traditional authorities**

**2.** (1) Every traditional community may be entitled to have a traditional authority comprising the following traditional leaders, namely -

(a) one chief; or

- (b) one senior traditional councillor; and
- (c) such number of traditional councillors,

as may be designated in accordance with the provisions of this Act.

(2) A traditional authority established in respect of a traditional community shall in the execution of its duties and functions and exercise of its powers, have jurisdiction over the members of that community.

#### **Designation of chiefs**

3. (1) Subject to the provisions of sections 5 and 6, the members of a traditional community may designate one person from amongst themselves, in accordance with the customary law of that community, who shall be instituted as chief of that community.

(2) The qualifications for designation and the tenure of, removal from and succession to the office of a chief, shall be regulated by the customary law of the traditional community in respect of which he or she is designated.

#### **Designation of senior traditional councillor and traditional councillors**

4. (1) Subject to the provisions of sections 5 and 6, a chief shall in consultation with the members of his or her traditional community, appoint from amongst the members of that community.

- (a) one person who shall be senior traditional councillor, and who shall assist the chief in the performance of his or her functions and duties, and perform such other duties as may be delegated to him or her by the chief; and
- (b) such number of traditional councillors as is specified in column 2 of the Schedule, in respect of the size of the population correspondingly specified in column 1 of that Schedule, who shall advise the chief and senior traditional councillor in the performance of their duties.

(2) The qualifications for designation and the tenure of or removal from office of a senior traditional councillor or traditional councillor shall be regulated by the customary law of the traditional community in respect of which such traditional leader is designated.

#### **Minister to receive prior notification of designation**

5. (1) Before the designation of a traditional leader in terms of this Act, the members of the traditional community concerned, or the chief, as the case may be, shall notify the Minister in writing of -

- (a) the reasons for the impending designation;

- (b) the date, time and place of such designation;
- (c) the name, office and traditional title if any, of the candidate to be designated as traditional leader; and
- (d) the customary law and rules of procedure applicable in that community in respect of such designation.

(2) On receipt of a notice referred to in subsection (1), the Minister or his or her representative shall attend the ceremony in respect of which he or she has been notified and shall -

- (a) witness the designation of the traditional leader concerned; and
- (b) satisfy himself or herself that such designation was in accordance with the customary law and rules of procedure referred to in paragraph (d) of subsection (1).

(3) Where -

- (a) the Minister is not given prior notification of a designation in accordance with the provisions of subsection (1); or
- (b) the designation of a traditional leader is not conducted in accordance with the customary law and rules of procedure referred to in paragraph (d) of subsection (1),

the designation of the traditional leader concerned shall be rendered invalid.

(4) Where in respect of a traditional community -

- (a) no customary law or rules of procedure regarding the designation of a chief exist; or
- (b) there is uncertainty or disagreement amongst the members of that community regarding the provisions of those rules.

the members of that traditional community in general meeting, shall elect their chief by a majority vote of all the members present in that meeting who have attained the age of eighteen years.

#### **Recognition of traditional leaders**

6. (1) Where the Minister is satisfied that a traditional leader has been designated in accordance with the requirements of section 5, he or she shall accordingly notify the President in writing, specifying the name, office, traditional title if any, and date of designation of the traditional leader, and the traditional community in respect of which such leader was designated.

(2) On receipt of a notice referred to in subsection (1), the President shall recognise the designation of a traditional leader by publication of the particulars referred to in that subsection -

- (a) in the *Gazette*; and
- (b) in such other manner as he or she may deem expedient.

(3) Notwithstanding any other provision in this Act, a traditional leader shall not be deemed to have been duly designated unless such designation has been duly recognised under this section.

(4) A person who before the commencement of this Act is duly designated as a traditional leader in respect of his or her traditional community and in respect of whose designation written notification has been submitted to the Minister, whether or not such traditional leader receives remuneration from the Government in respect of his or her traditional functions, shall have his or her designation recognised anew under this section.

(5) Notwithstanding the provisions of subsection (4), every traditional community shall within twelve months from the commencement of this Act, comply with the provisions of sections 2 and 4 and the Schedule, and shall within that period notify the Minister in writing of the designation.

(6) The provisions of subsection (2) shall *mutatis mutandis* apply to a notice submitted to the Minister under subsection (5).

#### **Use of traditional titles**

7. Nothing contained in this Act shall be construed as precluding the members of a traditional community from addressing a traditional leader by the traditional title accorded to that office, but such traditional title shall not derogate from or add to the status, powers and functions associated with the office of a traditional leader as provided for in this Act.

#### **Removal and succession of traditional leader**

8. (1) Where there is sufficient reason to warrant the removal of a traditional leader from office -

- (a) a chief may be removed from office by members of his or her traditional community in accordance with the customary law applicable;
- (b) a senior traditional councillor or traditional councillor may be removed from office by the chief in consultation with the members of the traditional community; and
- (c) where there is no chief designated, a senior traditional councillor or traditional councillor may be removed from office by his or her community in accordance with customary law.

- (2) Where by reason of -
- (a) death;
  - (b) mental or physical incapacity;
  - (c) expiry of the tenure of office;
  - (d) removal from office; or
  - (e) any other sufficient reason,

a traditional leader ceases to perform the functions of his or her office, another person from amongst the members of that traditional community may be designated in accordance with the provisions of this Act to replace such traditional leader.

(3) The provisions of sections 5 and 6 shall, *mutatis mutandis*, apply to the succession of a traditional leader under this section.

#### **Settlement of disputes**

9. (1) Where a dispute arises amongst the members of a traditional community as to whether -

- (a) a person designated as chief under section 3 is the rightful person under customary law;
- (b) a person designated as successor under section 8 is the rightful successor to the chieftainship; or
- (c) a person appointed as senior traditional councillor or traditional councillor is a fit and proper person to hold such office, and

the members of that community fail to resolve that dispute in accordance with their customary law, they may submit a written petition to the Minister stating the nature of their dispute.

(2) On receipt of a petition referred to in subsection (1), the Minister may in accordance with the Commissions Act, 1947 (Act 8 of 1947), appoint a judicial commission to investigate the dispute and to report to the Minister concerning its findings and recommendations.

(3) On receipt of the report of a judicial commission referred to in subsection (2), the Minister shall take such decision as he or she may deem expedient for the resolution of the dispute.

(4) In the investigation or resolution of a dispute under this section, regard shall be had to the relevant customary law and traditional practices of the community within which the dispute has arisen.

**Functions, duties and powers of traditional authorities**

**10.** (1) The functions of a traditional authority in relation to the traditional community which it leads, shall be to supervise and ensure the observance of customary law by the members of that community and to promote peace and welfare amongst that community, and in particular to -

- (a) ascertain the customary law applicable in that traditional community in consultation with the members of that community and assist in its codification;
- (b) administer and execute the customary law of that community;
- (c) uphold, promote, protect and preserve the culture, language, tradition and traditional values of that community;
- (d) preserve and maintain the cultural sites, works of art and literary works of that community;
- (e) perform traditional ceremonies and functions held within that community;
- (f) advise the Council of Traditional Leaders in the performance of its functions as provided under Article 102(5) of the Constitution or under any other law;
- (g) promote affirmative action amongst the members of that community, in accordance with Article 23 of the Constitution, in particular by promoting women to positions of leadership;
- (h) register practising traditional healers; and
- (i) perform any other functions as may be conferred upon their offices by law or custom.

(2) In addition to the functions specified in subsection (1), the members of a traditional authority shall have the following duties, namely -

- (a) to assist the police and other law enforcement agencies in the prevention of crime and apprehension of offenders within their jurisdiction;
- (b) to assist and co-operate with the organs of the central, regional and local government in the execution of their policies by keeping the members of the traditional community informed of developmental projects in their area; and



- (c) to ensure that the members of their traditional community use the natural resources at their disposal on a sustainable basis and in a manner that conserves the environment and maintains the ecosystems, for the benefit of all persons in Namibia.

(3) In the performance of its duties and functions under this Act, a traditional authority shall have power in respect of the traditional community it leads to -

- (a) raise funds and operate a trust fund on behalf of that community in accordance with the provisions of this Act;
- (b) to hear and settle, subject to customary or statutory law, disputes over any customary matter between the members of that traditional community;
- (c) assist the Police, subject to the Constitution, in apprehending persons reasonably suspected in having committed offences, and to cause them to be delivered into police custody; to seize any property or article involved in the suspected offence and to deliver such article to the police for investigation; and
- (d) exercise such other powers as may be conferred upon it by statutory or customary law.

#### **Limitation of powers of traditional authorities**

11. (1) In the performance of the functions and duties or exercise of the powers referred to in section 10 -

- (a) any custom, tradition, practice or usage which is discriminatory or which detracts from or violates the rights of any person as guaranteed by the Constitution or any other statutory law, or which prejudices the national interest, shall cease to apply;
- (b) any customary law which is inconsistent with the provisions of the Constitution or any other statutory law, shall be invalid to the extent of inconsistency;
- (c) the customary law of a traditional community shall only be applicable to the members of that community and to any person who is not a member of that traditional community but who by his or her conduct voluntarily submits himself or herself to the customary law of that traditional community; and
- (d) a traditional leader shall not permit his or her political opinions or allegiance to influence -

- (i) the functions or powers of his or her office as traditional leader;
- or

(ii) the members of the traditional community in respect of which he or she was designated.

(2) Notwithstanding anything contained in this Act to the contrary, no person shall while holding a political office also hold office as a traditional leader, and where any person holding the office of traditional leader is elected or appointed to a political office, he or she shall relinquish the office of traditional leader before taking up the political office.

(3) For the purposes of relinquishing a traditional office under subsection (2), a traditional leader appointed to a political office shall before taking up that office, submit a written notice to the Minister relinquishing his or her traditional office, and the Minister shall publish notice of such relinquishment in the *Gazette*.

#### **Relationship of traditional authority with Government organs**

**12. (1)** In the performance of its duties and functions and exercise of its powers under customary law or as specified in this Act, a traditional authority shall give support to the policies of the central Government, regional councils and local authority councils and refrain from any act which undermine the authority of those institutions as established by law.

(2) Where the powers of a traditional authority or traditional leader conflict with the powers of the organs of the central Government, regional councils or local authority councils, the powers of the central Government, regional council or local authority council, as the case may be, shall prevail.

#### **Remuneration of traditional leaders**

**13. (1)** The remuneration of traditional leaders shall be charged on the State Revenue Fund and paid out of moneys appropriated by Parliament for that purpose.

(2) The Minister, in consultation with the Minister of Finance, shall determine the remuneration payable in respect of each category of traditional leader referred to in this Act, regard being had to the status, duties and responsibilities of each office.

(3) Notwithstanding the provisions of this section and of subsection (4) of section 6, the Government shall after a period of twelve months from the commencement of this Act, only remunerate those traditional leaders designated in accordance with the provisions of subsection (5) of section 6, provided that nothing in this Act shall prevent traditional communities to remunerate those traditional leaders not designated in accordance with the schedule in this Act.

**Trust fund and assets of a traditional Community**

14. (1) A traditional authority may in consultation with the members of the traditional community, acquire, purchase, lease, sell or otherwise hold or dispose of movable and immovable property, in trust for that traditional community, and shall have such rights in respect of the acquisition and disposal of such property, as may reasonably be necessary or expedient for the carrying out of its functions and powers under this Act.

(2) A traditional authority may in consultation with the members of the traditional community operate a Community Trust Fund, to be held in trust for the members of that traditional community, and towards which the members of that community may contribute, for the purposes of -

- (a) financing projects in that community which promote and uplift the culture; preserve cultural sites, works of art and literary works of the traditional community;
- (b) meeting the administrative costs of running the office of the traditional authority;
- (c) meeting the costs of performing any of the functions and duties of a traditional authority under this Act; and
- (d) meeting any other costs that the traditional community may agree upon.

(3) The Minister in consultation with the Minister of Finance, may determine the manner which a Community Trust Fund by a traditional authority, may be administered, and the members of the traditional authority shall -

- (a) be individually and collectively accountable to their community for the administration of that fund and assets; and
- (b) cause proper books of accounts in respect thereof to be kept.

(4) The books of accounts referred to in paragraph (b) of subsection (3) shall be audited by the Auditor-General.

**Regulations**

15. The Minister may make regulations relating to -

- (a) the remuneration to be paid to traditional leaders, as determined under subsection (2) of section 13;
- (b) the manner of administering a Community Trust Fund or any other assets held in trust by a traditional authority for a traditional community, as determined under subsection (3) of section 14; and

- (c) any other matter that the Minister may deem necessary for giving effect to the provisions of this Act.

### **Repeal and savings**

16. Except for sections 17, 18, 23, 24, 25, 26 and 27 of the Native Administration Proclamation, 1928, (Proclamation No. 15 of 1928), and any regulations made under any of those sections, the rest of the provisions of that Proclamation including regulations made under those provisions, are hereby repealed.

### **Short Title and commencement**

17. This Act shall be called the Traditional Authorities Act, 1994 and shall come into force on a date to be determined by the Minister by notice in the *Gazette*.

### **SCHEDULE**

*(under section 4)*

Number of traditional councillors to be appointed in respect of the size of the population of the traditional community:

<b>COLUMN 1</b> Number of persons in community	<b>COLUMN 2</b> Maximum number of traditional councillors
Less than 3 000	2
3 000 to 15 000	4
over 15 000 to 30 000	6
over 30 000 to 60 000	8
over 60 000 to 180 000	10
over 180 000	15