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**IGazethi**  
 YESIFUNDAZWE  
 saKwaZulu-Natali

Ishicilelwe ngegunya  
 (Irejistiwe njengephephandaba eposihhovisi)

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**UMTHETHO WOBUHOLI NOKUBUSA KWENDABUKO WAKWAZULU-NATALI, 2005**(uMthetho No. 5 ka 2005)  
Uvunywe mhlaka 2005-12-01**UMTHETHO**

Wokuhlinzekela ukwamukeleka kwemiphakathi yendabuko; wokuhlinzekela ukusungulwa nokwamukeleka kwemikhandlu yendabuko; wokuhlinzekela ukwamukeleka kwabaholi bendabuko, kanye nokuhlinzekela ukwamukeleka kwendima kanye nemisebenzi yabo; wokuhlinzekela ukwamukeleka kweSilo njengeNdlunkulu yeSifundazwe saKwaZulu-Natali; wokuhlinzekela ukususwa esikhundleni komholi wendabuko; wokuhlinzekela iziNdlu zabaHoli beNdabuko; wokuhlinzekela ukuchithwa kwemithetho ethile; kanye nokuhlinzekela okunye okuphathelele nalokho.

**ISENDLALELO**

**NJENGOBA** iSifundazwe saKwaZulu-Natali, ngokoMthethosisekelo kanye noMthetho woHlaka loBuholi nokuBusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003), siyakwamukela ukubakhona kwemiphakathi yendabuko eSifundazweni, futhi sifuna —

- (a) ukwamukela, sivikele, siguqule, futhi silungisele isimo esiyivunayo intuthuko yemiphakathi esekelwe ngokwenqubo yendabuko, izikhungo endabuko, umthetho womdabu kanye namasiko; kanye
- (b) nokuguqula umumo kanye neqhaza kobuholi bendabuko ukuze kuhambisane nohlelo lokubusa ngokwentando yeningi eNingizimu Afrika;

**NANJENGOBA** uHulumeni weSifundazwe saKwaZulu-Natali efisa ukumisa imithetho ukwesekela izinqubomgomo nemisebenzi okubekwe kuwo nguMthetho woHlaka loBuholi nokuBusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003);

**NGAKHO-KE MAKUMISWE UMTHETHO** yiSishayamthetho seSifundazwe saKwaZulu-Natal, kanjena:

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18. Ukwamukeleka kwenkosi
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ISAPHLUKO 1  
IZINCAZELO, UKUHUNYUSHWI KANYE NOKUSETSHENZISWA

**Incazelo, ukuhunyushwa nokusetshenziswa**

1.(1) Kulo Mthetho, ngaphandle uma lesi sigatshana sichaza okunye —

“**ibambabukhosi**” kusho umuntu oyibamba lomholi wendabuko oqokwe ngokwesigaba 30;

“**iGazethi**” kusho iGazethi esemthethweni yeSifundazwe;

“**iKhomishana**” kusho iKhomishana yoKuxazulula iziNgxabano neMibango kuBuholi beNdabuko eyasungulwa ngokwesigaba 22 soMthetho woHlaka loBuholi nokuBusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003);

“**iLungu loMkhandlu oPhethe elengamele**” kusho ilungu loMkhandlu oPhethe elengamele ezendabuko esifundazweni;

“**imbizo**” kusho umhlangano wokubonisana wamalungu esizwe senkosi obizwe ngokosiko;

“**imithethonqubo**” kusho imithethonqubo eyenziwe ngokwesigaba 44;

“**iNdlu yeSifunda**” kusho iNdlu yeSifunda yaBaholi beNdabuko okukhulunywa ngayo esigabeni 36;

“**iNdlu yeSifundazwe**” kusho iNdlu yeSifundazwe yaBaholi beNdabuko okukhulunywa ngayo esigabeni 32;

“**iNdlunkulu**” kusho isikhungo noma isakhiwo esiyinsika ngokosiko esihlanganisa izihlobo ezisondelele nomndeni wasebukhosini emphakathini wenkosi, osungulwe ngokosiko, nobandakanya, lapho kufanele khona, amanye amalungu omndeni asondelele nomndeni wasebukhosini;

“**induna**” kusho umholi wendabuko osebenza ephethwe yinkosi noma olawula isigodi esingaphansi kweNkosi ngokomthetho wesiko futhi abe ngowemukelekile kanjalo ngokwalo Mthetho, kanti izinduna noma ubuduna kunencazelo ehambisana nale;

“**iNhloko yoMnyango**” kusho isikhulu esiphazulu somnyango weSifundazwe saKwaZulu-Natali owengamele ezendabuko;

“**Inkosi**” kusho umholi wendabuko njengoba echazwe kwisigaba 1 soMthetho woHlaka, futhi bese eba ngowamukelekile kanjalo ngokwalo Mthetho;

“**inkosi**” kusho umholi wendabuko oyinhloko njengoba kuchaziwe esigabeni 1 soMthetho woHlaka loBuholi nokuBusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003), nanjengoba kuvunywe ngaleyo ndlela esigabeni 19 salo Mthetho, kanti amakhosi anencazelo ehambisana nale;

“**iSifundazwe**” kusho iSifundazwe saKwaZulu-Natali esibekwe esigabeni 103 kuMthethosisekelo;

“**isikhungo noma uhlaka lwendabuko**” kusho lezo zikhungo noma izinhloko okwasungulwa ngokomthetho wendabuko;

“**iSilo**” kusho iNdlunkulu yeSifundazwe saKwaZulu-Natali, njengoba sivunyiwe esigabeni 17, noma “Ingonyama” njengoba kuchaziwe esigabeni 1 soMthetho woHlaka loBuholi nokuBusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003);

“**Isiphakanyiswa**” kusho inkosi esesikhundleni ngokwenqubo yokugcotshwa noma ukubekwa ngokwesiko, kanti iziphakanyiswa zinencazelo ehambisana nale;

“**iSishayamthetho seSifundazwe**” kusho iSishayamthetho seSifundazwe saKwaZulu-Natali;

“**lo Mthetho**” kuhlanganisa imithethonqubo kanye nezaziso okukhishwe ngokwalo Mthetho;

“**okunqunywe**” kusho lokho okunqunywe ngumthethonqubo ngokwalo Mthetho, kanti “**-nquma**” kunencazelo ehambisana nale;

“**uhulumeni wesifundazwe**” kusho uhulumeni wesifundazwe saKwaZulu-Natali;

“**umasipala wesifunda**” kusho umasipala onamandla omthetho kanye nokuphatha endaweni ehlanganisa umasipala abangaphezu kowodwa, njengoba kuchaziwe esigabeni 5 soMthetho waKwaZulu-Natali woKunqunywa kweZinhlobo zoMasipala, 2000 (uMthetho No. 7 ka 2000);

“**umasipala**” kusho umasipala ohlongozwe ngaye esigabeni 155 soMthethosisekelo weRiphabhuliki yaseNingizimu Afrika, 1996, nowasungulwa ngaphansi kwezigaba 11 no 12 zoMthetho woHulumeni baseKhaya: Izinhloko zoMasipala, 1998 (uMthetho No. 117 ka 1998), zifundwa nezigaba 3, 4 no 5 zoMthetho waKwaZulu-Natali woKunqunywa kweZinhlobo zoMasipala, 2000 (uMthetho No. 7 ka 2000);

“**uMongameli**” kusho lowo owengamele umbuso weRiphabhuliki yaseNingizimu Afrika;

“**umgomo wokuziphatha**” kusho umgomo wokuziphatha oqukethwe oHlelweni 1 lwalo Mthetho;

“**umholi wendabuko**” kusho namuphi umuntu, ngokomthetho wendabuko walowo mphakathi wendabuko othintekayo, onesikhundla sobuholi bendabuko, kungaba esobuduna, ubukhosi noma iSilo, novumeleke ngokwalo Mthetho noma ngokoMthetho woHlaka loBuholi kanye noKubusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003), kanti “**ubuholi bendabuko**” kunencazelo ehambisana nale;

“**umkhandlu kamasipala**” kusho umkhandlu kamasipala okukhulunywe ngaye eSahlukweni 7 soMthethosisekelo;

“**uMkhandlu oPhethe**” kushiwo uMkhandlu oPhethe weSifundazwe obekiwe ezigabeni 125(2) no 132 zoMthethosisekelo;

“**umkhandlu wendabuko**” kusho umkhandlu osungulwe ngokwesigaba 6;

“**umndeni wenkosi**” kusho izihlobo ezisondelele nenkosi, ezihlonzwe ngokwesiko noma ngokwendabuko, futhi okubandakanya, lapho kufanele khona abanye abantu abahlonzwe ngaleyo ndlela ngokweqhaza labo ngokomdabu;

“**uMnyango**” kusho umnyango weZohulumeni baseKhaya waKwaZulu-Natali owengamele ezendabuko;

“**umphakathi wendabuko**” kusho umphakathi wendabuko ovumeleke kanjalo ngokwesigaba 2;

“uMthethosisekelo” kusho uMthethosisekelo waseNingizimu Afrika, 1996;

“uNdunankulu” kusho undunankulu wesifundazwe saKwaZulu-Natali.

(2) Ayikho into equkethe kulo Mthetho engavimbela amalungu omphakathi osekelwe ngokwenqubo yendabuko ukuba uxhumane nomholi wawo wendabuko ngokumbiza ngokwesikhundla sendabuko anikwe sona ngokwesiko, kodwa lelo gama lesikhundla eliyosetshenziswa uma kukhulunywa naye kumbe ngaye alinakusiguqula isithunzi noma indima kanye nezibopho kumbe imisebenzi yomholi wendabuko njengoba kuhlinzekiwe kulo Mthetho;

(3) Abaholi bendabuko bangazihlukanisa bazazise futhi bakwamukele ukwahlukana ngokwamazinga obukhulu bezikhundla zabo nangobudala kozakwabo ngokwenkambiso yamasiko, futhi akukho okuchazwe kwisigatshana (1) somthetho okumele kubukwe njengokunikezela kumbe ukuphuca ukuhlonipheka komholi wendabuko lesi sithunzi sobudala.

## ISAPHLUKO 2

### IMIPHAKATHI ESEKELWE NGOKWENQUBO YENDABUKO KANYE NEMIKHANDLU EMISWE NGOKWENQUBO YENDABUKO

#### Ukwamukelwa kwemiphakathi esekelwe ngokwenqubo yendabuko

2.(1) Umphakathi unokwamukeleka njengomphakathi osekelwe ngokwenqubo yendabuko, uma —

- (a) ungaphansi kohlelo lobuholi bendabuko ngokwamasiko alowo mphakathi; futhi
- (b) uluhlonipha uhlelo lomthetho wamasiko.

(2) Umphakathi osekelwe ngokwenqubo yendabuko unokuba ufake kuNdunankulu isicelo sokwamukelwa njengomphakathi osekelwe ngokwenqubo yendabuko ngefomu egunyaziwe ekusheduli 2 kuloMthetho.

(3) Isicelo esichazwe kwisigatshana (2) kufanele sibe nale mininingwane —

- (a) ukuchazwa komphakathi;
- (b) isifanekiso senani labantu abahlala kulowo mphakathi;
- (c) igama elamukelekile lomphakathi;
- (d) igama leNkosi yalapho lowo mphakathi iwuphethe khona;
- (e) amagama abantu abemukelwa njengabaholi kulowo mphakathi kanye nezikhundla zabo abazithole ngokwesiko; kanye
- (f) nencazelo ngesigodi lapho lowo mphakathi uzinze khona.

(4) Lapho uNdunankulu ethola isicelo esichazwe kwisigatshana (2) salo Mthetho —

- (a) kufanele lesi sicelo asidlulisele kuNgqongqoshe ukuze aphawule kumbe aluleke; futhi
- (b) kufanele ukuba lesi sicelo asidlulisele kwiNdlu Yesifundazwe yabaHoli beNdabuko.

(5) UNdunankulu kufanele ukuba kuthi kungakapheli izinyanga ezintathu esitholile isicelo esichazwe kwisigatshana (2) —

- (a) abonisane ngaleso sicelo neSilo, neNdlu yeSifundazwe yabaHoli beNdabuko, nomphakathi wendawo, kanti uma kudingekile kanye neNkosi eyobe ibusa ngaleso sikhathi;
- (b) athathe isinqumo sokuthi kufanele yini ukuba lowo mphakathi wamukelwe njengomphakathi osekelwe ngokwenqubo yendabuko; futhi
- (c) azise lowo mphakathi ngesinqumo esithathiwe ngokwesigaba (b) ngasenhla.

(6) UNdunankulu kufanele ukuba akhiphe isitifiketi esisemthethweni sokwamukeleka salowo mphakathi osekelwe njengomphakathi osekelwe ngokwenqubo yendabuko, ngokohlelo lwalesi sigaba.

#### Imiphakathi esekelwe ngokwenqubo yendabuko kanye nemigomo yangokoMthethosisekelo

3. Umphakathi osekelwe ngokwenqubo yendabuko kufanele uguquke futhi uzejwayeze imithetho yamasiko kanye namasiko ukuze uhambisane nemigomo ebalulwe kuMthethosisekelo, ikakhulukazi ngokuba —

- (a) unqande ukubandlulula okungafanele,
- (b) uthuthukise ukulingana; futhi
- (c) ude uzama ukukhulisa ukumelwa kobulili ezikhundleni zomsebenzi wobuholi bendabuko.

#### Ukwamukelwa kwamalungu amasha emiphakathini esivele isisekelwe ngokwenqubo yendabuko

4. INkosi eseMkhawulwini inokwamukela noma ngabe yiliphi ilungu elisha noma ubani emiphakathini osuvele ususekelwe ngokwenqubo yendabuko ngokuhambisana nemithetho kanye namasiko alowo mphakathi futhi nangokwezigatshana zoMthethosisekelo.

#### Ukuhoxiswa kokwamukeleka kwemiphakathi esekelwe ngokwenqubo yendabuko

5.(1) UNdunankulu kufanele acabange kanzulu ngokuhoxiswa kokwamukeleka komphakathi njengomphakathi osekelwe ngokwenqubo yendabuko lapho —

- (a) umphakathi wendabuko othintekayo ufaka isicelo esibhaliwe kuNdunankulu sokuhoxiswa kokwamukeleka kwawo njengomphakathi osekelwe ngokwenqubo yendabuko;
- (b) uNdunankulu ecelwe umphakathi wendabuko noma imiphakathi yendabuko ethintekayo ukuba kubuyekwe isimo somphakathi wendabuko noma semiphakathi yendabuko eyayihlukanisiwe noma ihlanganisiwe ngaphambi konyaka ka 1994 ngokomthetho owawufanele; noma
- (c) imiphakathi emibili noma ngaphezulu eyamukeleke njengesekelwe ngokwenqubo yendabuko ifaka isicelo kuNdunankulu sokuba ihlanganisiwe ibe umphakathi owodwa.

(2) Ukwamukeleka komphakathi njengomphakathi osekelwe ngokwenqubo yendabuko kuhoxiswa uma —

- (a) uNdunankulu evuma isicelo somphakathi ukuba kuhoxise ukwamukeleka kwalowo mphakathi njengomphakathi osekelwe ngokwenqubo yendabuko;
- (b) isibuyekazo esiningwe kwisigatshana (1)(b) sikhomba ukuthi —
  - (i) umphakathi osuvele usekelwe ngokwenqubo yendabuko wakheka ngenxa yokuhlanganiswa ngaphambili konyaka ka 1994 ngokomthetho owawusebenza kufanele uhlukaniswe; noma
  - (ii) imiphakathi emibili noma ngaphezulu esekelwe ngokwenqubo yendabuko yakheka ngenxa yokuhlukaniswa

ngaphambi konyaka ka 1994 ngokomthetho owawusebenza kufanele ihlanganiswe; noma (iii) uNdunankulu evuma isicelo semiphakathi emibili noma ngaphezulu esekelwe ngokwenqubo yendabuko ukuba ihlanganiswe ibe umphakathi owodwa osekelwe ngokwenqubo yendabuko.

(3) UNdunankulu kumele abonisane neNdlu yeSifundazwe yabaHoli beNdabuko futhi nanoma yimuphi umphakathi lowo ongase uthin-teke ngaphambi kokuthi ukuhoxiswa kokwamukeleka komphakathi osekelwe ngokwenqubo yendabuko kufezekile.

(4) Ukuhoxiswa kokwamukeleka komphakathi osekelwe ngokwenqubo yendabuko kufezeka ngokuba kukhishwe isaziso *kwiGazethi*.

(5) Isaziso esibalulwe kwisigatshana (4) kufanele sihlizwelele ukuhoxiswa kokwamukeleka koMkhandlu othintekayo omiswe ngokwenqubo yeNdabuko ngaso lesi sikhathi bese kuhoxiswa ukwamukeleka kwalowo mphakathi osekelwe ngokwenqubo yendabuko.

#### Ukusungulwa kwanye nokwemkelwa kwemikhandlu emiswe ngokwenqubo yendabuko

6.(1) Umphakathi osekelwe ngokwenqubo yendabuko kufanele uma sewamukelekile ngokwesigaba 2, ubeke umkhandlu omiswe ngokwenqubo yendabuko zingakapheli izinyanga ezintathu, emuva kokuba sewazisiwe umphakathi ngokwesigaba 2(5)(c), nangokuvumelana nesigaba 3 soMthetho woHlaka loBuholi noKubusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003), njengoba kuhlinzekelwe kulesi sigaba.

(2) Isibalo samalungu omkhandlu omiswe ngokwenqubo yendabuko —

(a) kufanele sinqunywe nguNdunankulu ngokohlelo olugunyazwe nguNgqongqoshe ngokukhipha isaziso *kwiGazethi*, lolo luhlelo okuyofanele lunake isibalo sabantu balowo mphakathi othintekayo osekelwe ngokwenqubo yendabuko;

(b) singebe ngaphezulu kwezibonda ezingamashumi amathathu; futhi

(c) kufanele sithathe ingxenywe yokuthathu kube ngabesifazane.

(3) Le migomo elandelayo isetshenziswa ekubekweni komkhandlu omiswe ngokwenqubo yendabuko —

(a) ngokunaka isidingo sokuvumelana nomyalo wesigatshana (2), iNkosi yalowo mphakathi osekelwe ngokwenqubo yendabuko kufanele ngokwamasiko alowo mphakathi ikhethwe, kubaholi bendabuko nakumalungu omphakathi osekelwe ngokwenqubo yendabuko, amalungu angabi ngaphezulu kwama-60% womkhandlu omiswe ngokwenqubo yendabuko;

(b) amalungu asilele alowo mphakathi osekelwe ngokwenqubo yendabuko, okufanele ukuba enze okungenani amaphesenti angama-40, kufanele akhethwe ngokwenqubo yentando yeningi kwamanye amalungu alowo mphakathi osekelwe ngokwenqubo yendabuko, akhethelwe embizweni ephuthumayo ebizelwe lokhu kukhethwa kwawo futhi le mbizo yokukhetha lawo malungu yenganyelwe iNkosi yendawo;

(c) Inkosi kufanele imemezele amagama alowo malungu esiwakhethelwe ukuba semkhandlwini omiswe ngokwenqubo yendabuko ngaphambi kokuba kukhethwe ngokuvumelana nesigatshana (3)(a) lawo malungu asilele omkhandlu omiswe ngokwenqubo yendabuko;

(d) amalungu omkhandlu omiswe ngokwenqubo yendabuko aziphatha lezo zikhundla ngokuzinikela kube isikhathi esingaminyaka emihlanu.

(4) Inkosi yendawo kufanele, kuthi engakapheli amasonto amabili umkhandlu umiswe ngokwesigatshana (1), ibhale umbiko ithumele kuNdunankulu amagama amalungu omkhandlu omiswe ngokwenqubo yendabuko futhi ibalule neminingwane yokumisa lowo mkhandlu-onjalo.

(5) Uma singaneli isibalo sabesifazane abangabamba iqhaza eMkhandlwini omiswe ngokwenqubo yendabuko njengoba kubalulwe kwisigatshana (3)(a) no (b), inkosi yendawo kumele ithumele ubufakazi bokuthi abekho ngokwanele abesifazane abangatholakala ukubamba iqhaza.

(6) Esesitholile isaziso esibalulwe kwisigatshana (4) noma (5), uNdunankulu kufanele abheke ukuthi ukwakheka koMkhandlu omiswe ngokwenqubo yeNdabuko othintekayo kwenzeke njengokuhlela kwalesi sigaba kanye nesigaba 3 soMthetho woHlaka.

(7) Lapho isigatshana (5) singesetshenziswe kanti futhi noNdunankulu enelisekile ukuthi lesi sigaba kanye nesigaba 3 soMthetho woHlaka uhlonishiwe, uNdunankulu kufanele awumukele uMkhandlu omiswe ngokwenqubo yeNdabuko bese anqume nesigodi sawo ngokufaka isaziso *kwiGazethi*.

(8) Lapho isigatshana (5) sisebenza khona, uNdunankulu angase, uma eneliseka futhi esebonisene nomphakathi othintekayo osekelwe ngokwenqubo yendabuko ukuthi kufumaniseke ukuthi besingekho isibalo esanele sabesifazane abangabamba iqhaza eMkhandlwini omiswe ngokwenqubo yeNdabuko, angase lo mkhandlu omiswe ngokwenqubo yendabuko awumnqumele umgamu ophansi kunalowo odingwa yisigaba 3(2)(b) soMthetho woHlaka.

(9) Emva kokuba uNdunankulu esewunqumile umgamu ongaphansi kunalowo omiswe kwisigatshana (8) futhi enelisekile ukuthi ezinye izimiso zalesisigaba nesigaba 3 soMthetho woHlaka zifezekile, kufanele amukele lowo Mkhandlu omiswe ngokwenqubo yeNdabuko futhi bese anqume nesigodi sawo ngokufaka isaziso *kwiGazethi*.

(10) UNdunankulu kufanele —

(a) njalo eminyakeni eyisihlanu abuyekeze umgamu owehlisiwe obalulwe esigatshaneni (8); futhi

(b) aphinde awufumanise noma awuqinisekise umgamu ophansi obuyekeziwe ngokufaka isaziso *kwiGazethi*.

(11) Isigatshana (10)(b) kufanele sihanjiswa nase kuze kube uchithwe lowo umgamu ophansi.

(12) Nakuphi ukungaboni ngaso linye ngemingcele yezindawo ezingaphansi kwemikhandlu yendabuko kumele kubhekwane nacho ngokwesigaba 25 soMthetho woHlaka loBuholi noKubusa kweNdabuko, 2003: Kuye ngokuthi uma kungenzeka kube nokungaboni ngaso linye emva kokuhlakazwa kweKhomishana, lokho kungaboni ngaso linye kumele kubhekwane nacho ngokulandela amasu anagunywa nguNdunankulu.

#### Isikhathi sokuba sesikhundleni kanye nokugcwaliswa kwezikhala

7.(1) Isikhala kumalungu omkhandlu wendabuko sivele lapho —

(a) ilungu lesula ngokubhaliweyo

(b) isikhathi sokuba sesikhundleni kwelungu siphela;

(c) ilungu lishona; noma

(d) ilungu nangasiphi esinye isizathu lingeselona ilungu.

## (2) Isikhala —

- (a) kumalungu akhethiwe omkhandlu wendabuko kumele sigcwaliswe engakapheli amasonto eyisithupha kuvele lesi sikhala yinkosi ethintekayo ezokhetha ilungu lomphakathi wendawo yenkosi ukuba ligcwalise lesi sikhala; noma  
 (b) kumalungu akhethiwe omkhandlu wendabuko kumele engakapheli amasonto amathathu kuvele lesi sikhala ngamalungu akhethiwe omphakathi wesizwe ngokwesigatshana (3)(b) ukuba agcwalise lesi sikhala.

**Imisebenzi ejwayelekile yemikhandlu emiswe ngokwenqubo yendabuko****8.(1) Imisebenzi yemikhandlu emiswe ngokwenqubo yendabuko —**

- (a) ukuphatha izindaba zomphakathi osekelwe ngokwenqubo yendabuko ngokulandela amasiko endabuko;  
 (b) ukusiza, ukulekelela nokululeka abaholi bendabuko ekwenzeni imisebenzi yabo;  
 (c) ukusebenza ngokubambisana nomasipala ekuhlonzeni izidingo zomphakathi;  
 (d) ukukhuthaza umphakathi ukuba ubambe iqhaza entuthukweni noma ekuchibiyelweni kohlelo lwentuthuko oludidiyelwe lomasi-pala lapho umphakathi uhlala khona;  
 (e) ukuphakamisa amasu afanele kuHulumeni azolekelela intuthuko nokulethwa kwezimfuno zomphakathi esigodini somkhandlu wabaholi bendabuko emuva kokubonisana neZindlu zeSifunda nezeSifundazwe zabaHoli beNdabuko;  
 (f) ukubamba iqhaza ekwakhaweni kwenqubo nemithetho yakuleyo ndawo;  
 (g) ukubamba iqhaza ekwakhaweni kwezinhlelo zokuthuthukisa ezigabeni zikaHulumeni woMasipala, weSifundazwe nokaZwelonke;  
 (h) ukukhuthaza imicabango yokubusa ngokubambisana, uhlelo lwentuthuko oludidiyelwe, uhlelo lwentuthuko olusimeme nokufezwa kwezimfuno zomphakathi;  
 (i) ukukhuthaza ulwazi lwesintu ngenhloso yohlelo lwentuthuko olusimeme kanye nokubhekana nezinhlekelele;  
 (j) ukugqashisa umasipala oqondene ngezingu, nezehlakalo ezibeka lesi sigodi ebucayini, kumbe inhlalakahle yabantu yalesi sigodi, nokubamba iqhaza ekubhekane nezinhlekelele;  
 (k) ukucobelelana ngolwazi nokubambisana neminye imikhandlu emiswe ngokwenqubo yendabuko;  
 (l) ukwenza imisebenzi evela ngokomthetho wamasiko, ngokwamasiko nephathelene nemithetho ehambisana noMthethosisekelo;  
 (m) ukugcina amagugu omphakathi wendabuko;  
 (n) ukuchitha nokuvimbela lezo zinqubo ezikhuthaza uqhekeko esizweni;  
 (o) ukugquzela uxolo nokuthula phakathi kwamalungu emiphakathi yendabuko; kanye  
 (p) nokugquzela ubumbano phakathi komphakathi wendabuko.

## (2) Umkhandlu wendabuko kufanele —

- (a) ugcine imibhalo ngendlela efanele;  
 (b) uthumele amabhuku ezimali ukuba ahlolwe uMchwanezimabhuku-jikelele;  
 (c) uveze obala izipho;  
 (d) ube nomhlangano wonyaka womphakathi osekelwe ngokwenqubo yendabuko ukuze ubike ngemisebenzi nangezimali zomkhandlu; futhi  
 (e) uhloniphe imithetho yendlela yokuziphatha.

**Ukuphathwa kwenqubo yobulungiswa**

**9.** Umkhandlu omiswe ngokwenqubo yendabuko kufanele usebenzise amandla awo wenze nemisebenzi eqondene nokuphathwa nokusetshenziswa kobulungiswa njengobophezelwa ngumthetho.

**Ukusebenza ngokubambisana phakathi kwemikhandlu emiswe ngokwenqubo yendabuko kanye nomasipala**

**10.(1)** UHulumeni weSifundazwe kufanele asebenzise umthetho nezinye izindlela ukukhuthaza ukusebenza ngokubambisana phakathi kwemikhandlu emiswe ngokwenqubo yendabuko kanye noMasipala.

(2) Ukusebenza ngokubambisana okulindelekile kwisigatshana (1) kufanele kwakhelwe phezu kwezimiso zokuhloniphana nokuhlonishwa kanye nokwamukeleka kwesikhundla nendima yalabo yabaqondene.

(3) Ngaphandle kokufenyisa ukwendleleka kwesigatshana (1), umkhandlu omiswe ngokwenqubo yendabuko unokwethula emkhandlweni kamasipala isiphakamiso sokuqopha umthetho kamasipala obonwa ngumkhandlu omiswe ngokwenqubo yendabuko ukuthi udingekile kunoma yiluphi udaba oluqondene nqo nesigodi sawo.

(4) Isiphakamiso esilindelekile kwisigatshana (3), singase siphelekezwe ilowo mthetho-sichibiyelo kamasipala ohlongozwayo futhi wesekwe ngombhalo.

(5) Umkhandlu kamasipala kufanele ucubungule lowo mthetho-sichibiyelo kamasipala ohlongozwayo emhlanganweni wawo olandelayo futhi ungacela uvo neminingwane ethile kumphathi kamasipala.

(6) Uma kwenzeka ukuba umkhandlu kamasipala ungawamukeli Umthetho-sichibiyelo kamasipala ohlongoziwe, umkhandlu kamasipala kufanele ubonisane nomkhandlu omiswe ngokwenqubo yendabuko othintekayo ngaphambi kokuba unqabe noma yimuphi Umthetho-sichibiyelo kamasipala ohlongoziwe. Umkhandlu kamasipala kufanele ulethe isinqumo esibhaliwe futhi unikeze nezizathu.

**Ukwesekwa kwemikhandlu emiswe ngokwenqubo yendabuko**

**11.(1)** UHulumeni weSifundazwe kumbe umkhandlu kamasipala othintekayo kuleyo ndawo unganokwamukela umthetho noma ezinye izinyathelo ezingadingeka ukulekelela nokuqinisa amandla emikhandlu emiswe ngokwenqubo yendabuko ukuze ikwazi ukufeza imisebenzi yayo.

(2) UHulumeni weSifundazwe noma umkhandlu kamasipala othintekayokuleyo ndawo ungakwazi ukulekelela imikhandlu emiswe ngokwenqubo yendabuko ngezimali ukuze ikwazi ukuqhuba imisebenzi yayo.

(3) Ukwesekela okungenzeka kulesi sigaba kungabandakanya usizo ngohlelo lwezokuthutha uma isimo sezimali sivuma.

**Ukuqashwa kwabasebenzi bemikhandlu emiswe ngokwenqubo yendabuko**

**12.(1)** UHulumeni weSifundazwe noma umkhandlu kamasipala othintekayo ungakwazi ukusiza ekuqasheni abasebenzi bemikhandlu

emiswe ngokwenqubo yendabuko uma isimo sezimali esimisiwe sikwazi ukubhekana nalezo zidingo noma umthetho ukuvumela lokho. Lokho kuyokwenziwa ngokubheka ubungako balezondawo zendabuko nezigodi kanye nezidingo zomphakathi.

(2) Abantu abaqashelwe ukwenza le misebenzi yasemikhandlwini emiswe ngokwenqubo yendabuko kufanele babike kulowo muntu oqokwe inkosi ephethe kuleyo ndawo.

(3) Indlela yokuziphatha engamukelekile ekhonjiswa abaqashiwe kufanele ibikwe kulowo obekwe uNgqongqoshe okunguye oyocubungula udaba bese ethatha isinqumo ngokomthetho ofanelekileyo.

#### **Imihlangano yemikhandlu emiswe ngokwenqubo yendabuko**

**13.(1)** Inkosi kumele, zingakapheli izinsuku ezingama-21 emva kokusungulwa komkhandlu wendabuko ngokwesigaba 6, ibize umhlangano wokuqala womkhandlu wendabuko.

(2)(a) Imihlangano yemikhandlu yendabuko iphathwa yinkosi lowo mkhandlu ongena ngaphansi kwayo, ngaphandle uma leyo nkosi ingekho emhlanganweni, ngaleyo ndlela lowo mhlangano uyophathwa yisekela likasihlalo.

(b) Isekela likasihlalo womkhandlu wendabuko likhethwa ngamalungu alowo mkhandlu wendabuko emhlanganweni wawo wokuqala.

(c) Esimweni lapho bobabili usihlalo nesekela lakhe bengekho emhlanganweni, lowo mhlangano uyophathwa yibamba likasihlalo, eliyokhethwa ngamalungu akhona, komunye wabo.

(3) Inqubo eyolandelwa emihlanganweni yemikhandlu emiswe ngokwenqubo yendabuko kufanele ihambisane namasiko kanye nemithetho ebhekene namasiko.

(4) Kungaba nomhlangano ophuthumayo ongabizwa usihlalo kumbe amalungu amabili omkhandlu emiswe ngokwenqubo yendabuko wokucubungula udaba oluphuthumayo olungaba sohlwini lokuzokhulunywa ngakho ngokuzayo kodwa okungeke kusawulinda lowo mhlangano obese uhlelwe isikhathi esizayo.

#### **Amaminithi emihlangano**

**14.(1)** Yonke imikhandlu emiswe ngokwenqubo yendabuko kufanele igcine kahle amaminithi ayoyonke imihlangano equkethe lokhu okulandelayo:

- (a) usuku, isikhathi, indawo yomhlangano;
- (b) amagama amalungu aphumelele ukuza emhlanganweni;
- (c) zinqumo ngokufingqiwe ezithathiwe emhlanganweni;
- (d) uma ilungu licela ukuthi kubhalwe phansi ukuvota kwalo okungahambisani neningi.

(2) Ikhophi yamaminithi, kumele zingakapheli izinsuku eziyishumi nanhlanu emva kwanoma yimuphi umhlangano, ithunyelwe esikhulwini soMnyango esikhonywe yiLungu loMkhandlu oPhethe elebhekele lowo msebenzi.

#### **Izibonelelo zokuziphilisa nokuhamba zamalungu emikhandlu emiswe ngokwenqubo yendabuko**

**15.** UNdunankulu ebonisana nelungu loMkhandlu oWengamele elibhekene nezezimali kufanele anqume izindleko eziphathelele nokudla nokuhamba kwamalungu emikhandlu emiswe ngokwenqubo yendabuko.

### **ISIAHLUKO 3**

#### **IZIKHUNDLA ZOBUHOLI ESIMISWENI SOBUHOLI BENDABUKO**

#### **Ukwamukeleka kwezikhundla zobuholi bendabuko**

**16.** Lezi zikhundla zobuholi bendabuko ezilandelayo ziyemukeleka ngokwesiko —

- (a) iSilo;
- (b) amakhosi; kanye
- (c) nezinduna.

#### **Ukwamukeleka kweSilo njengeNhloko yeSizwe**

**17.(1)** ISilo ngalokhu siyamukeleka njengeNhloko yeSifundazwe.

(2) ISilo kumele sibekwe ngokomthetho wamasiko kanye nangokuvumelana nalo Mthetho.

(3) Kuyothi njalo uma kuzogcwaliswa isikhundla seSilo kuyomele kulandelwe lamasu alandelayo:

- (a) Umndeni waseNdlunkulu kumele uma kunesidingo futhi kuhambisana nemithetho yamasiko esintu wenze lokhu okulandelayo:
  - (i) uhlonze okunguyena ofanele ukuthatha isikhundla seSilo njengokubalula kwemithetho yamasiko nanjengoba kulotshwe esigabeni 10(a),(b) noma (d) soMthetho wobuHoli nokuBusa kweNdabuko owuHlaka uma simfanela;
  - (ii) wazise uNdunankulu kanye noNgqongqoshe igama kanye nezizathu zokuhlonza lowo ozokuba iSilo; bese
  - (iii) uNdunankulu ebikela uMongameli wezwe ngezinqumo ezithathiwe.

(4) UMongameli kumele azise iNdlu kaZwelonke kanye neNdlu yeSifundazwe yabaHoli beNdabuko ngokwamukeleka noma ngokubekwa kwalowo abe yiSilo.

(5) Undunankulu angahlela umcimbi okhethekile ukuze iSilo siqinisekise ukuzinikela nokwethembeka kwaso kwiPhabhabhulikhi yaseNingizimu Afrika naseSifundazweni kanye nokuthobela nokuhlonipha nokweeka uMthethosisekelo neminye imithetho.

#### **Iqhaza nemisebenzi kweSilo njengeNgonyama yeSizwe**

**18.(1)** Izibopho zeSilo yilezi:

- (a) ukweseka uMthethosisekelo;
- (b) ukukhuthaza ubumbano kuzwelonke nakwisifundazwe;
- (c) ukuqhuba imisebenzi yeSilo ngokwemithetho yamasiko;
- (d) ukuhlanga kanye ngonyaka nabanye abaholi bendabuko baseNingizimu Afrika;



- (e) ukwenza imisebenzi kwimkuvula iSishayamthetho seSifundazwe;  
 (f) ukuxhasa nokuthuthukisa imiphakathi eyamukeleka njengemiphakathi esekelwe ngokwenqubo yendabuko, nokuphatha imisebenzi esabelwe yona kwimicimbi yendabuko yokubekwa kwaMakhosi emiphakathini ehlukene ngaphezu kwakho konke okubhekeke ukuthi sikwenze iSilo okuqondene namasiko;  
 (g) ukubambisana noMkhandlu oweNgamele iSifundazwe —  
 (i) ukuklomelela ngezindondo labo abavelele;  
 (ii) ukubonana nezihambeli eziqavile ezivela kwamanye amazwe;  
 (iii) ukumela uHulumeni weSifundazwe saKwaZulu-Natali ngokwamasiko nangokokuhlalisana komphakathi eNingizimu Afrika naphesheya kwezilwandle; kanye  
 (iv) nokuba isikhulumi emihlanganweni yeSifundazwe edidiyele izinhloko ezehlukene zikaHulumeni.

(2) Isilo singaqoka namuphi umuntu noma abantu ngokulandela amasiko kanye namasiko-mpilo, ukuba enze noma benze imisebenzi kanye nemikhuba ethile okuvela ngokwenza imisebenzi yaso ngaphansi kwesigatshana (1).

#### Ukwamukeleka kweNkosi

19.(1) Uma kuzogcwaliswa isikhundla sobukhosi kumele kulandelwe lamasu:

- (a) Ngokulandela isiko, futhi ngesikhathi esamukelekayo, umndeni wenkosi kufanele —  
 (i) uhlonze lowo okumele ngokwesiko athathe isikhundla sobukhosi ngokulandela isigaba 22(1)(a), (b), noma (d) uma simfanela lesi sigaba;  
 (ii) unikeze uNdunankulu izizathu ezenze baqoke lowo ohlonziwe njengenkosi; futhi  
 (iii) uNdunankulu elandela isigatshana (3), kufanele amukele njengeNkosi lowo ohlonzwe ngokwesigatshana (2)(a)(i).

(2) Ukwamukeleka kwalowo njengeNkosi ngokwesigatshana (1)(a)(iii) kufanele kwenzekwe ngalendlela:

- (a) ngesaziso *kwiGazethi* sokwamukeleka kwaloyo ohlonzwe njengenkosi; futhi  
 (b) kukhishwe isitifiketi sokwamukeleka salowo ohlonziwe.

(3) UNdunankulu kufanele azise iNdlu yeSifundazwe yabaHoli beNdabuko ngokwamukeleka noma ngokubekwa kweNkosi.

(4) Lapho kukhona ubufakazi noma ukukhononda ngokuthi lowo ohlonziwe ukuba abekwe njengeNkosi akwenziwanga ngokwesiko noma ngenqubo esesikweni, uNdunankulu:

- (a) angaludlulisela lolu daba eNdlini yeSifundazwe yabaHoli beNdabuko ukuba iphawule; noma  
 (b) anganqaba ukukhipha isitifiketi sokwamukeleka kwalowo ohlonziwe; futhi  
 (c) makaphindisele lolu daba emndenini wenkosi luyocubungulisiwa, luxazululwe lapho isitifiketi sokwamukeleka sigodliwe.

(5) Uma ngabe lolu daba obelubuyiselwe emuva emndenini wenkosi ukuthi lucutshungulwe futhi luxazululwe ngokwesigatshana (4) seluxazululwe, uNdunankulu uma enlisekile ngendlela udaba olucutshungulwe ngayo nendlela nangesinqumo esithathwe umndeni weNkosi ngokulandela uMthetho wamasiko, kumele amamukele njengeNkosi lowo ohlonzwe umndeni wenkosi

(6) Ukwamukeleka kweNkosi njengomholi womphakathi wendabuko kuyokwenzeka kuphela lapho uNdunankulu esekhiphe isaziso *kwiGazethi*.

(7) Engakapheli amasonto amathathu isaziso sikhishiwe, iNkosi eseyemukelekile iyobhalela uNdunankulu imazise ngamagama enduna noma izinduna zeNkosi kanye nosuku namagama awowonke amalungu omkhandlu omiswe ngokwenqubo yendabuko ayekhona kubekwa induna noma izinduna.

(8)(a) Inkosi inqunyelwe ukuthatha umhlalaphansi lapho seyibhale incwadi yesicelo sokuthatha umhlalaphansi iyibhekise kwilungu elifanele loMkhandlu oPhethe.

(b) Ekuthatheni umhlalaphansi, inkosi ayibe isavunywa noma iqokwe njengenkosi ngokwalo Mthetho.

#### Iqhaza kanye nemisebenzi yamakhosi

20.(1) Amakhosi kufanele —

- (a) ahloniphe uMthethosisekelo kanye nemithetho futhi akuqinisekise ukuthi amalungu omphakathi wayo osekelwe ngokwenqubo yendabuko anamalungelo ashicilelwe kuMthethosisekelo kuhlangene namalungelo okukhululeka kwezombusazwe nokujoyina izinhlangano abazikhethela zona;  
 (b) akhuthaze inqubo yentando yeningi, ubumbano kwiSifundazwe nokuhlonipha imithetho kazwelonke neyesifundazwe;  
 (c) enze imicimbi yamasiko ngokungaphikisani nemithetho kaZwelonke kanye neSifundazwe futhi ngokuhambisana nomphakathi ovulelekile nohambisana nenqubo yentando yeningi;  
 (d) agcine futhi akhuthaze ulwazi nokuqonda usikompilo lwesiZulu, umlando kanye nendabuko.

(2) Inkosi ngayinye kufanele —

- (a) ibize futhi ibike emhlanganweni womkhandlu wayo omiswe ngokwenqubo yendabuko okungenani kanye ezinyangeni ezimbili;  
 (b) ibize futhi ibike emhlanganweni womphakathi wayo osekelwe ngokwenqubo yendabuko kanye ezinyangeni ezintathu;  
 (c) ithamele imihlangano yokubonisana yeNdlu yeSifundazwe yabaHoli beNdabuko;  
 (d) ibambe iqhaza emikhandlwini yomasipala uma ikhoniwe ngokwesigaba 81 soMthetho woHulumeni baseKhaya: uMthetho weziNhlaka zoMasipala, 1998 (uMthetho No. 117 ka 1998);  
 (e) yenze imisebenzi egunyazelwe amakhosi nguNgqongqoshe igcine umthetho nokuthula, futhi ibike kuNgqongqoshe ngokuphuthuma noma yiluphi udaba oluyikhathazayo kanye noma yisiphi isimo sodlame noma sokunganeliseki;  
 (f) iqinisekise ukuvikeleka kwempilo, kwabantu nokwempahla kanye nokuphepha kwezivakashi endaweni yayo, kanye nokubika ngokushesha emnyangweni ofanele kaHulumeni weSifundazwe noma kaMasipala noma kubikwe kunoma yiziphi iziphathi-mandla eziqondene nalolo ludaba —  
 (i) ukufa kwanoma imuphi umuntu odlameni noma ngezinye izizathu ezingajwayelekile;  
 (ii) ukuqubuka kwanoma yisiphi isifo esithathelwanayo;  
 (iii) ukusetshenziswa nganoma iyiphi indlela engekho emthethweni kwempahla kaHulumeni;  
 (iv) ukuthatha noma ukusetshenziswa kwemali yomphakathi ngokuphambene nenqubo esemthethweni; kanye  
 (v) nokwenzeka kwezendo ezingekho emthethweni endaweni ezingaphezu kwamandla ayo ukuba izixazulele yona;

(g) iqinisekise ukuthi amalungu omphakathi wayo osekelwe ngokwenqubo yendabuko ungakwazi ukuthi ngokuthula futhi abe engahlomile, asebenzise amalungelo awo ngokoMthethosisekelo, aziqokele ngokukhululeka kwezombusazwe, azihlanganise nanoma ngubani, akhulume, axoxe, azimbandakanye embuthweni, abhikishe, futhi aziqokele inkolo, ukukholelwa kanye nokubeka imibono.

(h) yazise izakhamuzi zendawo yayo ngezidingo zanoma yimuphi umthetho omusha;

(i) iqinisekise ukuthi yonke imithetho noma imiyalelo yalabo abasemandleni iyalandelwa;

(j) ivikele isihluku ezilwaneni;

(k) lapho umthetho uvuma, ivalele noma iyiphi imfuyo edla ngokungekho emthethweni noma etholakala iwuvanzi, noma elethe ngaphansi kwezimo ezisolisayo endaweni yayo futhi ikubike lokhu kulabo abaphethe;

(l) izame ukukhuthaza umdlandla womphakathi wayo osekelwe ngokwenqubo yendabuko nalowo wesifunda, futhi isimamise isungule nezindlela zokuthuthukisa umpkhakathi.

(3) Inkosi ingebe yilungu noma ingezimbandakanye ezenzweni ezithize noma ingekhuthaze ngandlela thize imigomo yanoma iyiphi inhlangothi zinhloso noma ukwenza kwayo —

(a) kungukuketula uhulumeni ngendlela engekho emthethweni;

(b) kungukusakaza umoya wempi;

(c) kungukuphehla umoya wodlame noma wokungahloniphi kwanoma yimuphi umthetho; noma

(d) kube kungukugcizelela umoya wenzondo ogxilise ekucwasaneni ngokobuzwe, ngokobuhlanga, ngokobulili noma ngokwenkolo, futhi kube ngokuzoshoshozela ukulimazana.

(4) Uma Inkosi yahluleka ukuthobela imithetho yezwe noma yesifundazwe noma yenqaba ukwenza yinoma yimuphi umsebenzi okumele iwenzile ngokwaloMthetho, ingaphenywa ngokwesigaba 24.

#### Ukususwa komholi wendabuko esikhundleni

21.(1) Inkosi ingagudlulwa esikhundleni ngenxa —

(a) yokutholakala inecala isigwebo kube ukuboshwa izinyanga ezingaphezulu kwezi-12 ngaphandle kokuvunyelwa kwenhlawulo;

(b) yokuba, uma kunobufakazi obuvela kwabezempilo obukhomba ukuthi ayiphilile ngokomzimba noma ngokwengqondo okwenza ukuthi leyo nkosi ungakwazi ukwenza umsebenzi wayo;

(c) yokubekwa esikhundleni sobukhosi ngephutha noma ngokwamukeleka njengenkosi ngephutha

(d) yokwephula umthetho noma umgomo wamasiko okungaholela ekubeni igudlulwe esikhundleni;

(e) yokwephula umthetho wendlela yokuziphatha; noma

(f) yokungaziphathi kahle njengokubalulwa isigaba 24.

(2) Nanoma nini uma lezi zizathu ezibekwe ezigatshaneni (1)(a), (b), (c), (d) no (e) zifinyelela emndenini wenkosi bese umndeni wenkosi uthatha isinqumo sokugudlulwa umholi wendabuko, umndeni weNkosi leyo esikhathini esamukelekayo futhi nangezinhloko zamasiso —

(a) angazisa uNdunankulu ngemininingwane yomholi wendabuko okufanele agudlulwe esikhundleni; futhi

(b) ubalule izizathu zokugudlulwa lowo mholi wendabuko.

(3) Umholi wendabuko angagudlulwa esikhundleni kuphela ngenxa yezizathu ezibalulwe kwisigatshana (1)(a), (b) noma (c) ngasenhla ngemva kokunikezwa ithuba lokwethula izikhalo ngezizathu eziholele ekugudlulweni kwakhe esikhundleni, futhi nalezo zikhalo makube sezicuthungulwe ogunyaziwe.

(4) Umholi wendabuko angagudlulwa esikhundleni kuphela ngenxa yezizathu ezibalulwe kwisigatshana (1)(d), (e) noma (f) esingasenhla ngemva kokwenza uphenyo ngokwesigaba 24.

(5) Lapho sekuthathiwe isinqumo sokugudlulwa umholi wendabuko esikhundleni ngokwesigaba 24, uNdunankulu kufanele —

(a) ahoxise isitifikethi sokwamukeleka kusukela ngalolo lusuku abe egudlulwe ngalo;

(b) akhiphe isaziso *kwiGazethi* esineminingwane ngalowo mholi wendabuko; futhi

(c) azise umndeni wenkosi kanye nalowo mholi wendabuko ogudluliwe futhi azise neNdlu yeSifundazwe yabaHoli beNdabuko ngokugudlulwa okunjalo.

(6) Lapho umholi wendabuko egudluliwe esikhundleni sekungabekwa lowo ozolandela ngokwaloMthetho futhi nangokwesiko elivamile.

#### Amandla agunyaza uMkhandlu oPhethe ukuthi ubize abaholi bendabuko

22.(1) Kanti umyalo walo Mthetho noma wamuphi umthetho, uMkhandlu oPhethe uma nje ubona kudingekile ungabiza yinoma umuphi umholi wendabuko ngokumbhalela azovela ngaphambi kwawo ukuze kuphenywe —

(a) yinoma yiluphi udaba olulimaza noma olungase lulimaze umphakathi osekelwe ngokwenqubo yendabuko; noma

(b) yinoma yiluphi udaba olwenqeniso noma olusematheni olungakhubaza lowo mholi wendabuko ngokomsebenzi noma olungakhubaza ukusebenza kukaHulumeni weSifundazwe; noma

(c) yinoma yiluphi udaba olungalimaza ukuphatha kukaHulumeni weSifundazwe endaweni yomphakathi osekelwe ngokwenqubo yendabuko.

(2) Ngemva kokuthi uMkhandlu oPhethe usulucubulungile udaba —

(a) usungabonisa umholi wendabuko ukuthi athathe izinyathelo ezithile ukuxazulula inkinga;

(b) usungayalela UNgqongqoshe ukuthi enze uphenyo ngokwesigaba 24 lapho kunesizathu sokukholwa ukuthi umholi wendabuko unecala lokungaziphathi kahle.

#### Uphenyo ngokungaziphathi kahle

23.(1) Lapho kunesizathu sokukholwa ukuthi umholi wendabuko unecala lokungaziphathi kahle ngokuthi —

(a) uyahluleka noma uyenqaba ukuthobela umyalo waloMthetho noma wanoma yimuphi umthetho okuyisibopho sakhe ukuthi awuthobe;

(b) usephule umthetho wendlela yokuziphatha;

(c) akahloniphi, uyadelela noma wenza amaphutha ngamabomu ekwenzeni akuthunywe ngabaphathi okusemthethweni;

- (d) uziphatha ngendlela eyichilo, engafanele noma enokuchwensa;
- (e) ukhombisa umoya wokuvukela abaphathi;
- (f) uphuza ngokweqile noma udakwa ngokweqile;
- (g) usebenzisa isikhundla sakhe ngokungafanele noma uphanga izimali noma agwazise noma aqole athole noma yini yokumbonga, imali, umvuzo noma isipho;
- (h) uhlulela noma yimuphi umuntu noma ajezise noma ubani ebe engenalo igunya lokwenza lokho;
- (i) akawunaki umsebenzi wakhe noma uyivila; noma
- (j) usake walahlwa icala, uNgqongqoshe kufanele ngokubhala phansi, ambeke icala umholi wendabuko ongaziphathi kahle kanjalo.
- (2) Icala elibalulwe kwisigatshana (1), kufanele —
- (a) lihlele imininingwane yokusoleka komholi wendabuko;
- (b) limkhombise umholi wendabuko ukuthi abhale aphenyule ngalawo macala abekwa wona zingakapheli izinsuku ezingamashumi amabili nanye, leyo mpendulo okungaba eyokuwaphika, futhi achaze.
- (3) Uma umholi wendabuko eliphika icala noma ehluleka ukuphendula ngalo ngalesi sikhathi esinqunyiwe, uNgqongqoshe kufanele abeke ozokwengamela uphenyo ngalawo macala.
- (4) Lowo oqokelwe ukwengamela uphenyo ngokwesigatshana (3) esingasenhla, kufanele abize umhlangano wophenyo lwalawo macala, futhi kufanele amazise umholi wendabuko obekwe icala ngosuku, ngesikhathi nangendawo yomhlangano wophenyo kusasele izinsuku eziyishumi nane.
- (5) Emhlanganweni wophenyo kufanele umholi wendabuko obekwe icala anikezwe ilungelo lokulalelwa, okungaba nguye luqobo noma kube ngummeli wakhe, futhi angambuza ufakazi, angacwaningisisa noma yimuphi umbhalo ongaba nobufakazi, futhi angababiza ofakazi bakhe.
- (6) Lowo owengamele uphenyo kufanele ayigcine imininingwane yokulalelwa kophenyo.
- (7) Lowo owengamele uphenyo angalanda noma yimuphi umuntu othintekayo azokwethamela ukulalelwa kophenyo futhi anikeze nobufakazi ngecala lalowo mholi wendabuko.
- (8) Noma yimuphi umuntu olandwe ngokwesigatshana (7) ongase ahluleke ukufika ngesikhathi, ngosuku noma endaweni yokulalelwa kophenyo njengoba kuchachisiwe encwadini embizayo, usengatholakala enecala, uma limlahla agwetshwe noma ahlawuliswe imali engengaphezulu kuka R10 000 noma aboshwe isikhathi esingevi izinyanga eziyi-6.
- (9) Uma umholi wendabuko obekwe icala ahluleka ukuthamela umhlangano wophenyo ngaphandle kwesizathu esizwakalayo, akunakukwesulwa ukulalelwa kwecala.
- (10) Uma sekuphelile ukulalelwa kophenyo, lowo owengamele uphenyo kufanele athumele kuMkhandlu Owengamele isinqumo, imininingwane yokuthethwa kwecala noma yini ayiqaphelile kanye nalokho afisa ukukuphawula.
- (11) Uma uMkhandlu Owengamele usulucubungulile udaba lophenyo, izikhalo zomholi wendabuko isinqumo nezaluleko zalowo obengamele uphenyo, usungamqumela isijeziso lowo mholi wendabuko okungaba esisodwa noma eziningana zalezi —
- (a) isexwayiso esibhalwe phansi;
- (b) ukumiswa okwesikhashana emsebenzini ngaphandle kokuhola isikhathi singevi izinyanga ezintathu;
- (c) inhlawulo engengaphezulu komholo wakhe wezinyanga ezintathu ngokomyalelo woMthetho oLawula uKukhokhelwa kwaBaphathi-zikhundla zoMphakathi, umkhandlu owengamele usungamqumela indlela yokukhokha eSikhwameni seMali seSifundazwe; noma
- (d) isaziso sokwephucwa ukwamukeleka kobuholi bendabuko.
- (12) Noma yisiphi isijeziso esinqunyiwe uMkhandlu oPhethe kufanele, ngokwesigatshana (11) sikhishwe sibe yisaziso *kwiGazethi*.
- (13) Isinqumo salowo owengamele uphenyo kanye nesijeziso esinqunyiwauMkhandlu oPhethe kuba ngumnqamulajuqu.

#### Ukumiswa komholi wendabuko

- 24.(1) UNgqongqoshe ngemva kokubonisana noMkhandlu Owengamele, angakumiswa okwesikhashana ukusebenza kwanoma yimuphi umholi wendabuko osolakala sengathi akaziphethe kahle kuze kuphethwe ukulalelwa kwecala elifakwa ngokwezigaba 23 no 24 zalo Mthetho.
- (2) Noma yimuphi umholi wendabuko obemisiwe okwesikhashana ukusebenza ngokwalesi sigaba akafanele ukuhola ngaleso sikhathi, uma kungaba nezizathu ezamukelekayo futhi ezanele, futhi ngemva kokucubungulisa izikhalo zalowo mholi wendabuko othintekayo, uNgqongqoshe usengakugunyaza ukuholelwa kwakhe okungaba yingxenyane yeholo noma umholo ophelile.
- (3) UNgqongqoshe noma uMkhandlu Owengamele noma yinini ungayalela ukuthi kwesulwe ukumiswa okwesikhashana ukusebenza kwalowo mholi wendabuko.
- (4) Lapho uNgqongqoshe ebona kudingekile angabeka umbambeli ngokwemiyalelo yalo Mthetho abe sesikhundleni sanoma yimuphi umholi wendabuko osamisiwe okwesikhashana ukusebenza.

#### Ukungabibikho komholi wendabuko

25. Umholi wendabuko angewunyamalalele umphakathi wakhe osekulwe ngokwenqubo yendabuko endaweni yakhe kuze kwedlule izinsuku ezingamashumi amathathu ngaphandle kwemvume kaNgqongqoshe noma yalowo oqokelwe ukugunyaza lokho, futhi kufanele akuhlENZEKELE ukuqhubeka komsebenzi wakhe ngendlela efanele ngenkathi yena engekho.

#### Umuntu okhonjiwe

- 26.(1) Emva kokubonisana nomndeni wayo, iNkosi, ingaqoka umuntu okhonjiwe ozokwenza umsebenzi wayo uma iNkosi —
- (a) iba yilungu eligwele lomkhandlu kamasipala;
- (b) ikhethwa njengelungu leSishayamthetho seSifundazwe;
- (c) ikhethwa ukuba yilungu loMkhandlu weSishayamthetho sikaZwelonke;

- (d) iqokwe njengenxusa loMkhandlu kaZwelonke weZifundazwe; noma
- (e) ikhethelwe noma iqokelwe, isikhundla sokusebenza ngokuphelele kunoma iyiphi iNdlu yabaHoli beNdabuko.

(2) Lapho umuntu okhonjiwe eseqokelwe ukuba abambeke inkosi, ngokwalesi sigaba, iNkosi kufanele yazise uNdunankulu ngendlela efanele, futhi uNdunankulu kufanele:

- (a) azise iNdlu yeSifundazwe yaBaholi beNdabuko ngalokho kwamukeleka;
- (b) emva kwalokho amukele lowo muntu okhonjiwe oqokwe ngokufaka isaziso lokhu *kwiGazethi* ngesikhathi esifanelekile; futhi
- (c) zingakapheli izinsuku ezingamashumi amathathu emva kokufaka isaziso *kwiGazethi* ngokwamukeleka komuntu okhonjiwe, amnikeze isitifiketi sokwamukeleka lowo ohlonzwe ngokwesigatshana (1).

(3) Ukwamukeleka okubalulwe kwisigatshanai (2) kuphela lapho kuphela ubulungu, ukubekwa noma ukukhethwa okubalulwe esigatshaneni (1).

(4) Umuntu okhonjiwe lingagudlulwa esikhundleni ngezizathu ezifanayo futhi kulandelwa imigomo efanayo esebenza nxa kugudlulwa iNkosi.

(5) Umuntu okhonjiwe angenza imisebenzi efanayo naleyo ebeyenziwa inkosi ayibambeke.

#### Izinduna

27.(1) Izinduna zingenza imisebenzi yamasiko yokuyimela iNkosi futhinokuba ngabalekeleli bayo.

(2) Izinduna zingabekwa kuwo umphakathi osuwamukeleke njengomphakathi osekelwe ngokwenqubo yendabuko ngokulandela lo Mthetho ukuze zisebenze njengamalungu eMikhandlu emiswe ngokwenqubo yeNdabuko emisebenzini yeMikhandlu emiswe ngokwenqubo yendabuko njengoba ichazwe kulo Mthetho.

(3) Izinduna zinganikwa isithunzi esifanayo, futhi zingenza imisebenzi efanayo naleyo eyenziwa ngamalunga eMikhandlu emiswe ngokwenqubo yeNdabuko.

(4) NgokwaloMthetho, futhi nangokuhambisana nomthetho wamasiko kanye namasiko endabuko, ubuduna bamukelwa ngokuzinikela ilungu lomphakathi osekelwe ngokwenqubo yendabuko.

(5) Induna ingagudlulwa nguNdunankulu esikhundleni ngokucela kweNkosi eyiphethe, —

- (a) ngokutholakala inecala isigwebo kube ukuboshwa izinyanga ezingaphezulu kwezi-12 ngaphandle kokuvunyelwa kwenhlawulo
- (b) ngokuba, uma kunobufakazi obuvela kwabezempilo obukhomba ukuthi ayiphilile ngokomzimba noma ngokwengqondo okwenza ukuthi leyo nkosi ingakwazi ukwenza umsebenzi wayo;
- (c) ngokubekwa esikhundleni sobukhosi ngephutha noma ngokwamukeleka njengenkosi ngephutha
- (d) ngokwephula umthetho noma umgomo wamasiko okungaholela ekubeni igudlulwe esikhundleni;
- (e) ngokungaziphathi kahle;

Uma kuvunywa induna ethintekayo kufanele ngaphambi kokugudlulwa esikhundleni inikezwe ithuba lokuziphendulela ngezinsolo zamacala aholele kwizizathu zokugudlulwa kwayo esikhundleni.

#### Ukwesekelwa kwezinhloko ezimiswe ngokwenqubo yeNdabuko

28. UMnyango ungahlinzeka ngosizo —

- (a) emiphakathini yasezindaweni zabaholi bendabuko;
- (b) emikhandlini yezindawo zabaholi bendabuko; kanye
- (c) nasesikhungweni zobuholi bendabuko njengoba kuvunywe yilo Mthetho,

ngamakhono okuthuthukisa, ngokuphatha noma nagamuphi omunye umkhakha lapho kudingeka khona ukwesekwa.

#### Iziphakanyiswa

29.(1) Emiphakathini lapho Inkosi iphetha isikhundla ngokwenqubo yendabuko noma yokubekwa kunokuba isithole lesikhundla ngenxa, yesiko lobundlafa futhi kulandelwa isinqumo esiphathelene nokufaneleka kwaleyonkosi kuleso sikhundla okungenziwa yiKhomishana ngokwesigaba 25 no 26 soMthetho woHlaka, umuntu okhethwe ngalendlela, uyophatha isikhundla sokuba iNkosi isikhathi esiyiminyaka eyisihlanu, futhi ngaleso sikhathi esesikhundleni umukeleka ngokuthi iNkosi efana namanye Amakhosi ngaphansi kwezimiso zalo Mthetho.

#### Ibambabukhosi

30.(1) Ibambabukhosi lingahlonzwa futhi livunywe kuphela lapho —

- (a) ozothatha ubukhosi obuthintekayo engakahlonzwa;
- (b) ozothatha ubukhosi baseNdlunkulu noma ebukhosini esemncane;
- (c) inkosi noma iSilo esivunywe ngokwezigaba 17 noma 19, kuye ngesimo, engezuba khona endaweni yakhe isikhathi esingaphezu kwezinyanga eziyisithupha ngenxa —
  - (i) yokwelashelwa ukungaphili;
  - (ii) yokuyofunda; noma
  - (iii) yanoma iyiphi enye inhloso esemthethweni, kodwa kukhipha izimo okukhulunywa ngazo esigabeni 26(1).

(2) Ukuvumeleka kwebambabukhosi kumele kubuyekwe nguNdunankulu, emva kokubonisana noNgqongqoshe owengamele, okungenani kanye emva kweminyaka emithathu.

(3) Ngezinhloso zokuhlonzwa kanye nokuvunywa kwebambabukhosi, izihlinzeko zezigaba 17 kanye no 19 ziyasebenza kanye nezinguquko ezifanele.

(4) Ibambabukhosi kumele lenze imisebenzi egameni leSilo noma inkosi, kuye ngesimo, kuze kube lesi Silo noma leyo Nkosi isisesimweni sokubuyela esikhundleni.

(5) Ngezinhloso zokususa ibambabukhosi esikhundleni, izihlinzeko zezigaba 21 ziyasebenza kanye nezinguquko ezifanele.

(6) Uma, ezinsukwini ezingama-30, ibambabukhosi lingakahlonzwa, uNdunankulu, emva kokubonisana neNdlu yaBaholi bendabuko yeSifundazwe kanye noMkhandlu oPhethe (iKhabhinethi), angaqoka umuntu ofanele ukuba asebenze okwesikhashana njengebambabukhosi kuze kube yisikhathi lapho iNdlunkulu noma umndeneni wenkosi uqoka ibambabukhosi.

**ISIAHLUKO 4  
IZINDLU ZABAHOLI BENDABUKO**

**Izinhlaka zobuholi beNdabuko**

**31.** Ngaphezu kokwengamela imikhandlu emiswe ngokwenqubo yendabuko, Amakhosi angabamba iqhaza kulezi zinhlaka zobuholi bendabuko ezilandelayo —

- (a) eNdlini zeSifundazwe; kanye
- (b) naseziNdlini zeSifunda.

**Ukusungulwa kweNdlu yeSifundazwe saKwaZulu-Natali yaBaholi beNdabuko**

**32.** Indlu yeSifundazwe saKwaZulu-Natali yaBaholi beNdabuko ngalokhu iyasungulwa.

**Ukubumbeka kweNdlu yeSifundazwe**

**33.**(1) INdlu yeSifundazwe yabaHoli beNdabuko iyokwakheka kanje —

- (a) Isilo noma lowo oqokwe yiso; kanye
- (b) nenani lamalungu elingengaphansi kwamathathu futhi lingevi kumalungu ayisikhombisa akhethwe kuleyo Ndlu yeSifunda yabaHoli beNdabuko ngayinye.

(2) Isibalo samalungu eNdlu yeSifundazwe yabaHoli beNdabuko angakhethwa kwiNdlu yeSifunda ngasinye siyobekwa nguNgqongqoshe ngokulandela isibalo semiphakathi esekelwe ngokwenqubo yendabuko okuyiyona yamukeleke endaweni ephethwe yileyo Ndlu yeSifunda.

(3) INdlu yeSifundazwe yaBaholi beNdabuko kufanele ihlangane okungenani izikhathi ezine njalo ngonyaka, kanti futhi ingahlangu noma nini uma umsebenzi wabo udinga ukuthi benze njalo.

(4) Ihlala leNdlu yeSifundazwe yaBaholi beNdabuko yidolobha Ulundi, noma enye indawo eqokwe uMkhandlu oPhethe weSifundazwe.

(5) INdlu yeSifundazwe yabaHoli beNdabuko kufanele ihlangane zingakapheli izinsuku ezingamashumi amathathu emva kokuthi uNgqongqoshe ekhiphe isaziso kwiGazethi sokuhlangana kwayo.

(6) UNgqongqoshe kufanele akhiphe isaziso sokuhlanganisa iNdlu yeSifundazwe emva kokuthi isibalo esingengaphansi kwamashumi amahlanu emiphakathi esekelwe ngokwenqubo yendabuko seyamukelekile ngokwalo Mthetho.

(7) Akekho umuntu oyokuba negunya lokuba akhethwe njengelungu leNdlu yeSifundazwe noma athameleokukanye azibandakanye emihlanganweni yayo (ngaphandle kokuba isibukeli esihlezi egalari) kuze kube umphakathi lowo athi uyawuhola usuwamukelekile njen-gomphakathi osekelwe ngokwenqubo yendabuko ngokwaloMthetho.

(8) Isihlalo selungu leNdlu yeSifundazwe yabaHoli beNdabuko sisala singenamuntu ngokufa noma ngokugudlulwa kwalo esikhundleni, kanti sibe sesigcwaliswa ngoyothatha lesi sikhundla ngokulandela imigomo yesigatshana (1).

(9) Amalungu eNdlu yeSifundazwe yabaHoli beNdabuko abuswa yimithetho efanayo naleyo ebusa amalungu ePhalamende leSifundazwe ngokuphatelene nokukhwanisa kanye nokuvezwa kwezipho nenye inzuzo abayithola ngezikhundla zabo zokuba Amakhosi.

(10) Isihlalo selungu leNdlu yeSifundazwe siba nesikhala lapho —

- (a) lelo lungu lishona; noma
- (b) likhishwa esikhundleni.

(11) Amalungu eNdlu yeSifundazwe asebenza ngaphansi kwemithetho efanayo naleyo esebnza kumalungu eSishayamthetho seSifundazwe mayelana nenkohlakalo kanye nokudalulwa kwezipho kanye nokunye okutholakale ngokusebenzisa isikhundla sabo njengamakhosi.

(12) UNgqongqoshe oWengamele angaqoka noma adlulisele okwesikhashana futhi akhokhele unobhala kanye nabaphi abanye abasebenzi abadingwa yiNdlu ukuba benze imisebenzi yayo.

(13) INdlu yeSifunda yaBaholi beNdabuko —

- (a) ineqhaza nemisebenzi eyinikwe yilo Mthetho; futhi
- (b) inezinye izindima nemisebenzi eyinikiwe noma egidlabezwe yona wumthetho kazwelonke noma egunyazwe nguNgqongqoshe.

(14) INdlu yeSifundazwe ingasungula futhi ikhethe ikomidi eliphethe elinamalungu angekho ngaphezu kwayi-10 aleyo Ndlu yeSifundazwe.

(15) Ikomidi eliphethe leNdlu yeSifundazwe lineqhaza kanye nemisebenzi elethweswe yona yiNdlu yeSifundazwe.

**Iqhaza kanye nemisebenzi yendlu yeSifundazwe yaBaholi beNdabuko**

**34.**(1) INdlu yeSifundazwe yabaHoli beNdabuko ingeluleka futhi yenz iziphakamiso nezinye izeluleko kuHulumeni weSifundazwe, ngokusebenzisa ihhovisi likaNgqongqoshe, maqondana —

- (a) nokushaywa kwemithetho noma izindaba ezithinta abaholi bendabuko, imikhandlu emiswe ngokwenqubo yendabuko noma imiphakathi esekelwe ngokwenqubo yendabuko; kanye
- (b) nokushaywa kwemithetho nezindaba eziphatelene namasiko esiZulu namasiko endabuko, noma izindaba nje uNgqongqoshe acele imibono yabanye ngazo.

(2) Izeluleko, okuhlongozwayo kanye neziphakamiso ezenzwe ngokwesigatshana (1) zingezibaluleke kakhulu kodwa futhi angeke zilivimbe iPhalamende leSifundazwe ekutheni lishaye umthetho ophambene nokuqokethwe yilezo zeluleko, yilokho okuhlongozwayo.

kanye neziphakamiso okuvela eNdlini yeSifundazwe yaBaholi beNdabuko, inqobo nje uma lokho kushaywa komthetho kuhambisana noMthethosisekelo futhi kuqhakambisa amagugu nesigqi somphakathi osekelwe ngentando yeningi evulelekile.

(3) Noma yikuphi ukushaywa komthetho okusalindile noma Umthethosivivinyo obalulwa kwisigatshana (1) ngenhla, kufanele udluliselwe eNdlini yeSifundazwe yaBaholi beNdabuko engahlangana uma kunesidingo ezingamashumi amathathu iNdlu ibize umhlangano ophuthumayo, ukuzocubungula futhi yenze iziphakamiso ezibhaliwe ngalokho kushaywa komthetho ePhalamende leSifundazwe zingakapheli izinsuku ezingamashumi amathathu.

(4) Uma kwenzeka ukuthi iNdlu yeSifundazwe yabaHoli beNdabuko iyehluleka ukuhlala icubungule lokho kushaywa komthetho noma yehluleka ukwenza iziphakamiso ezinsukwini ezingamashumi amathathu kudluliselwe kuyo, ukushaywa komthetho sekungavotelwa yiPhalamende leSifundazwe ngaphandle kokuthi iNdlu yeSifundazwe yaBaholi beNdabuko ikhishelwe esinye isaziso.

#### **Imihlangano yeNdlu yeSifundazwe**

35.(1) UNgqongqoshe owengamele kumele, emva kokukhethwa kweNdlu entsha, ngesaziso *kwiGazethi*, abize umhlangano weNdlu yeSifundazwe.

(2) Emhlanganweni weNdlu yeSifundazwe wokuqala, iJaji leNkantolo ePhakeme yaseNingizimu Afrika kumele libe usihlalo kuze kube usihlalo nesekela likasihlalo weNdlu yeSifundazwe kuyaqokwa ngamalungu eNdlu, emva kwalokho usihlalo weNdlu kumele asingathe ukukhethwa kwamalungu asele eKomidi eLiphethe, okumele lihnganise amalungu angekho ngaphansi kwesihlanu futhi engevile eshumini.

#### **Ukusungulwa kweZindlu zeSifunda zaBaholi beNdabuko**

36.(1) INdlu yeSifunda yaBaholi beNdabuko ngalokhu iyasungulwa ezindaweni zomasipala bezifunda apho kukhona khona imiphakathi esekelwe ngokwenqubo yendabuko emihlanu noma ngaphezulu.

(2) Uma kwenzeka ukuthi sekukhona vele imiphakathi esekelwe ngokwenqubo yendabuko engaphansi kweyisihlanu endaweni yanoma yimuphi uMasipala weSifunda, abaholi bendabuko bangakhetha oyedwa phakathi kwabo ukuyomela leyo miphakathi esekelwe ngokwenqubo yendabuko emihlanganweni yomasipala besifunda.

#### **Ukubumbeka kwezindlu zesifunda**

37.(1) Leyo naleyo Ndlu yesifunda iyobunjwa yiyo bonke amakhosi akumasipala waleso sifunda.

(2) Indlu yesifunda ingasungula futhi ikhethe ikomidi eliphethe elinamalungu angekho ngaphezu kwayisikhombisa aleyo Ndlu.

(3) Ikomidi eliphethe leNdlu yeSifunda ineqhaza kanye nemisebenzi ebekelwe yona yileyo Ndlu yeSifunda.

#### **Imihlangano yeNdlu yeSifunda**

38.(1) UNgqongqoshe owengamele kumele, ngesaziso kwigazethi, abize imihlangano wokuqala yeZindlu zesifunda.

(2) Emhlanganweni wokuqala weNdlu yeSifunda umuntu oqokwe nguNgqongqoshe kumele abe nguSihlalo kuze kufike isikhathi lapho uSihlalo kanye neSekela liakSihlalo waleyo Ndlu yeSifunda ekhethwa ngamalungu eNdlu.

(3) Imihlangano yeZindlu zeSifunda kumele ibizwe ngesaziso esibhalelwe wonke amalungu okungenani izinsuku ezine ngaphambi kosuku lomhlangano.

#### **Iqhaza kanye nemisebenzi yeZindlu zeSifunda**

39.(1) Ngezinhloso zeqhaza kanye nemisebenzi yeNdlu yeSifunda, izihlinzeko esigaba 17(3) zoMthetho woHlaka loBuholi noKubusa kweNdabuko, 2003 (uMthetho No. 41 ka 2003) ziyasebenza nezichibiyelo ezifanele.

(2) Uma amalungu eNdlu yeSifunda enesizathu sokukholwa ukuthi elinye lamalungu aleyo Ndlu lishaya indiva iqhaza noma imisebenzi yalo njengelungu, angeluleka lelo lungu, kuncike kodwa-ke ekutheni indima yabo ukweluleka, futhi abanawo amandla okuqondisa izigwegwe kulelo lungu.

#### **Ukudluliselwa komthetho eZindlini zesifunda**

40.(1) Namuphi umthetho ophathelene nokuhlizekwa kwemisebenzi noma nokuklanywa kwemingcele, noma yokusetshenziswa kombalaba ongaphansi kolawulo lukamasipala wesifunda futhi ongasebenza emiphakathini yezindawo zabaholi bendabuko kumele udluliselwe eNdlini yeSifunda ngaphambi kokuba uphasiswe.

(2) Uma iNdlu yeSifunda iphikisana nalowo mthetho, imibono kanye nezincwadi kwayo kungadluliselwa kuNgqongqoshe owengamele kanye nakwiSishayamthetho seSifundazwe zingakapheli izinsuku ezingama-30.

### **ISAHLUKO 5 IZIHLINZEKO EZIJWAYELEKILE**

#### **Imisebenzi ejwayelekile**

41.(1) Amalungu eNdlu yeSifundazwe kanye naweZindlu zeSifunda zaBaholi beNdabuko, bonke abaholi bendabuko kanye nawo wonke amalungu azo zonke izigungu zendabuko, ngokubambisana noma engawodwana, kufanele —

- (a) enze ukuba izigatshana zoMthethosisekelo zisebenze;
- (b) enze izidingonqangi zemiphakathi ayisebenzelayo zibe yiyonanto ephambili kunazo zonke ezinye;
- (c) akhuthaze ukuthuthuka kwemiphakathi ayisebenzelayo;
- (d) aqinisekise ukuthi wonke amalungu omphakathi awusebenzelayo ayazithola izidingo; futhi
- (e) aqinisekise ukuthi izidingo ezilethwa yiwo zifika ngendlela engagubi muntu kanti futhi zitholakala kalula, ngendlela enobuhlakani, nenokonga, nekhombisa ukuzimisela neletha ubungcono ezimpilweni zabantu.

(2) Indlu yeSifundazwe kanye neziNdlu zeSifunda zabaHoli beNdabuko zingashaya imithetho neziyalo maqondana nokuphathwa nokusebenza kwazo.

(3) Isibalo samalungu esilingene sokuxoxa nokubonisana seNdlu yeSifundazwe kanye neseNdlu zeSifunda zabaHoli beNdabuko singaba okungenani ingxenye yokuthathu yawo wonke amalungu aleyondlu ukuze kukwazi ukuqala umhlangano ovumelekile waleyo Ndlu, futhi okungenani kungaba ingxenye yamalungu onke aleyoNdlu uma sekuvotelwa noma yiluphi udaba.

(4) Zonke izinqumo zeNdlu yeSifundazwe kanye neziNdlu zeSifunda zabaHoli beNdabuko zizuzwa yiningi lamalungu asuke ekhona kulowo mhlango.

#### Umgomo wokuziphatha

42.(1) Kuyoba khona Umthetho Wendlela Yokuziphatha weSifundazwe saKwaZulu-Natali njengoba uqukethwe ku Hlelo 1.

(2) Umthetho Wendlela Yokuziphatha uthinta wonke amalunga eNdlu yeSifundazwe yabaHoli beNdabuko kanye neziNdlu zabaHoli beNdabuko beSifunda, bonke abaholi bendabuko kanye nawo wonke amalungu ayo yonke imikhandlu emiswe ngokwenqubo yendabuko.

(3) Umgomo wokuziphatha uhlanganisa uMgomo wokuziphatha kazwelonke oqukethwe oHlelweni loMthetho woHlaka woBuholi noKubusa kweNdabuko njengalokhu ude uchibiyelwa.

(4) UNgqongqoshe angade enazezela noma ede echibiyela ngezimiso kuMthetho weSifundazwe Wendlela Yokuziphatha, kodwa angeguqile, angechibiyele noma angesuse kumbe enzeni kuMthetho Wendlela Yokuziphatha kaZwelonke.

(5) UNgqongqoshe angagunyaza ukusetshenziswa kwamasu okuphatha udaba okusolakala sengathi kunokwaphulwa kuMthetho Wendlela Yokuziphatha.

#### Ukufungiselwa esikhundleni

43. Amalungu amasha emikhandlu emiswe ngokwenqubo yendabuko, eNdlu yeSifundazwe kanye nazeziNdlu zeSifunda zabaHoli beNdabuko baqala ukusebenza kwizikhundla zabo ezintsha kuphela ngemva kokufunga nokuqinisa ukusebenza ngokwethembeka eSifundazweni futhi nangokuthobela uMthethosisekelo ngokoHlelo 2 phambi kwaloyo okhethiweyo ngokubhala kukaNgqongqoshe.

#### Amandla okulawula

44.(1) UNdunankulu esebonisene noNgqongqoshe owengamele angakwazi ukwenza izimemezelo ngokuzifaka *kwiGazethi* ngokulandela lo Mthetho;

(2) UNgqongqoshe angakwazi, ngokufaka isaziso *kwiGazethi* ukushaya imithetho abuye enze izimemezelo mayelana —

(a) nanoma iluphi udaba oludingwa noma oluvunyelwa ukugunyazwa yilo Mthetho;

(b) nokwethulwa nokufezekiswa kohlelo lokuphathwa kokusebenza kweMikhandlu emiswe ngokwenqubo yeNdabuko, kwabaHoli beNdabuko, kweNdlu yeSifundazwe yaBaholi beNdabuko kanye nokweziNdlu zeSifunda zabaHoli beNdabuko; futhi

(c) nanoma yiluphi udaba oluqondene nokuphatha noma nenqubo olungaletha uguquko kwisigatshana salo Mthetho, kulanganisa nazo zonke izindlela zokusingatha ukhetho njengokuchaza kwalo Mthetho.

(3) Noma yisiphi isimiso noma isimemezelo esishaywe ngokulandisa kwesigatshana (1) no (2) kumele kuthulwe kwiPhalamende yeSifundazwe zingakapheli izinsuku ezilishuminane kufakiwe kwiGazethi uma iPhalamende ingavalile, noma zingakapheli izinsuku ezilishuminane iPhalamende isivulile.

#### Umthetho ubophezela uMbuso

45. Lo Mthetho uyawubophezela uMbuso.

#### Amandla omthetho

46. Lezi zimiso ezilandelayo zinamandla omthetho:

(a) Imikhandlu yendabuko;

(b) INdlu yeSifundazwe yaBaholi beNdabuko; kanye

(c) neziNdlu zeSifunda zaBaholi beNdabuko.

#### Izimpahla, izikweletu kanye nezinsiza

47.(1) Izimiso ezibalulwe esigabeni 46 —

(a) zingathola, ukuba abanikazi, ukugcina izimpahla, ukuqashisa, ukuhlukanisa, ukudlulisa ubunikazi, ukuchitha impahla engagudluki negudlukayo;

(b) zingathola amalungelo futhi zithwale izindleko zokwenza noma yimuphi umsebenzi, kanye nasekwenzeni nasekufezeni indima yazo amandla agunyaziwe, imisebenzi nezibopho zazo njengokulandisa kwalo Mthetho;

(c) zingasungula futhi ziphathe izinhlaka zentuthuko, amafa nalezo zimali ezingasetshenziswa ngokulandisa kwaloMthetho nangokulandela uMthetho Wokuphathwa Kwezimali zikaHulumeni;

(d) ziqaphe ngomshwalense nanoma iyiphi inkampani noma wumuphi umuntu, ukubhekela noma ikuphi ukulahlekelwa okungenzeka kungalindelekile, izingozi, ingcuphe kanye nezindleko;

(e) zingamangala noma zimangalelwe egameni lazo; futhi

(f) zingaqhelelanisa, zithiye noma zichithe impahla enokusuwa nengenakususwa, ngemvume ebhaliwe yeLungu loMkhandlu oPhethe elibhekele lokho.

(2) Izikhungo ezihlingizwe esigabeni 46, kumele zisingathe wonke umnotho nengcebo kanye nezinsizakusebenza kwazo.

#### Ukudluliselwa kwamandla, ukunikezela imisebenzi kanye nezivumelwano zokumelelana nokwethulwa kwemisebenzi

48.(1)(a) Ngokulandela lo Mthetho uNgqongqoshe angadlulisela amandla okwenza izimiso noma okukhipha izaziso zomthetho kwiNhloko yoMnyango o phethe izindaba zabuholi bendabuko kusifundazwe saKwaZulu-Natal, inqobo nje uma amandla adluliselwe angaphazamisani nalowo Ngqongqoshe womnyango.

(b) Lokho kudlulisela akukuvimbela ukusetshenziswa kamandla afanele nguNgqongqoshe othintekayo.

(2) Iminyango kaHulumeni weSifundazwe, izimiso ezisemthethweni, izakhiwo zombuso kanye noMasipala kungakwazi: udlulisela amandla okwenza noma umsebenzi; noma

- (a) angenele njengesikhungo sentuthuko noma asayinde izivumelwano zokuletha izidingo zemiphakathi nezinye,
- (b) izikhungo njengokulandisa kwesigaba 46;

#### Ukuxazululwa kwezingxabano

49.(1) Noma nini lapho kuqubuka ingxabano maqondana nomthetho wamasiko noma ngenxa yokusetshenziswa kwalo Mthetho noma ngokunye emphakathini osekulwe ngokwenqubo yendabuko noma phakathi kwemiphakathi eskelwe ngokwenqubo yendabuko noma kwezinye izimiso ezisekelwe ngokwenqubo yendabuko, amalungu aleyomiphakathi noma alezo zimiso kanye nalabo baHoli beNdabuko abaqondene kumele bayixazulule ingxabano ngokwenqubo yomndeni futhi nangokulandela inqubo yomthetho wamasiko kanye namasiko.

(2) Noma iyiphi ingxabano ecutshungulwe kwisigatshana (1) engekeyaxazululeka ingadluliselwa —

- (a) eNdlini yeSifundazwe yaBaholi beNdabuko okulindlekele ukuba ithole isixazululo ngokulandela imithetho nenqubo zingakapheli izinsuku ezingamashumi amathathu;
- (b) uma kungukuthi iNdlu yeSifundazwe yaBaholi beNdabuko iyahluleka noma yehlulekile ukuthola isixazululo, uNgqongqoshe ngokulandela izigatshana 21(1)(b) no 25 zoMthetho woHlaka, angadlulisela udaba kwiKhomishana yenze isiphakamiso zingakapheli izinsuku ezingamashumi amathathu; futhi
- (c) uma kungukuthi uNgqongqoshe uyahluleka noma wehlulekile ukuveza isixazululo, uNdunankulu angangenelela ekutholeni isixazululo kodwa uma esebonisene nalaba abalandelayo:
  - (i) uNgqongqoshe;
  - (ii) amaqembu axabene; kanye
  - (iii) neNdlu yeSifundazwe yaBaholi beNdabuko.

#### Izinhlelo ezigamanxile ngokwemingcele

50. Uma uNdunankulu esebonisene noNgqongqoshe, usengenza izivumelwano neminye iminyango kaHulumeni weSifundazwe mayelana nezindaba eziphathelene nemiphakathi eskelwe ngokwenqubo yendabuko, nabaHoli bendabuko noma ngezimiso ezisekelwe ngokwenqubo yendabuko uma kungukuthi ukusebenza ngokubambisana kungenza-ngcono ukuphathwa kwezinhlelo zeSifundazwe.

#### Amacala nezijeziso

51.(1) Umuntu unecala lokwephula umthetho uma nje lowo muntu —

- (a) eziphathisa okomholi wendabuko kodwa engakaze amukelwe ngokusemthethweni njengokulandisa kwaloMthetho;
- (b) ephazamisa ngenhloso ukufezeka, ukusebenza noma ukwenziwa kwanoma iyiphi indima, amandla, umsebenzi noma izibopho ezigunyaziwe noma ezinikezwe noma yimuphi umHoli weNdabuko, noma yimuphi uMkhandlu omiswe ngokwenqubo yeNdabuko, iNdlu yeSifundazwe yabaHoli beNdabuko, noma iyiphi iNdlu yeSifunda noma iKhomishani njengoba kubekiwe kuloMthetho noma-ke ngabe yimuphi umthetho.

(2) Ngokulandisa kwesigatshana (1), uma umuntu etholakale enecala lokwephula umthetho angahlawuliswa noma agqunywe ejele izinyanga ezingangaphezulu kwezinyishumi nambili, noma athweswe kokubili.

#### Izinhlelo zesikhashana zoguquko

52.(1) Kungakapheli unyaka, kuqalile ukusebenza koMthetho woHlaka ophethe izindaba zabaholi bendabuko, uNgqongqoshe angafaka isaziso *kwiGazethi*, ukuqeda ukusebenza kokuphathwa kwezimiso zesifunda ngokomthetho owawusungulwe ngaphambi kokuqala kokusebenza kwalo Mthetho.

(2) Isaziso ngokuhlakazwa kwezimiso zesifunda kufanele silawule ngokusemthethweni, ngenqubo nangemiphumela yokuhlakazwa kwalezi zimiso, kuhlanganise —

- (a) ukudluliselwa komnotho, kwezikweletu, kwamasu okugcina nenqubo yokuphatha koMnyango ofanele weSifundazwe, uMasipala noma iNdlu yeSifunda yabaHoli beNdabuko, ngokulawulwa yisimo;
- (b) ukugudluka kwalowo msebenzi esikhundleni akusona sakuleso simiso seSifunda;
- (c) ukushintshelwa kwezinye izindawo kwabasebenzi bakuleso simiso seSifunda.

(3) Zonke izinqumo zokuphathwa okwenziwe nguHulumeni weSifundazwe ngokomthetho maqondana nemiphakathi eskelwe ngokwenqubo yendabuko, amalungu emiphakathi eskelwe ngokwenqubo yendabuko, ubuHoli beNdabuko, abaHoli bendabuko izimiso zeNdabuko izimiso zomphakathi, izimiso zeSifunda noma emikhakheni yazo lezo zimiso yokuphatha, kuthathwa njengokwenziwe ngokwaloMthetho —

- (a) kube sengathi umthetho ogunyaza lokhu wabe ukhona ngelesosikhathi lezi zinto zenzeka. Lokhu kuhlanganisa, kodwa kungacini nje lapho kuphela, lokhu okulandelayo: ukuthuma noma ukujuba imisebenzi, izivumelwano zokuthunywa, izivumelwano zamandla okusayina, izivumelwano zokusebenza; noma
- (b) lapho umthetho waleyonkathi, kodwa kungacini nje kulokhu, ukuthuma noma ukujuba imisebenzi, izivumelwano zokuthunywa, izivumelwano zamandla okusayina, izivumelwano zokusebenza, wawungalandelwa ngokugcwele.

(4) Ukuze kuvumele ukufezeka kwenqubo ebalulwe kwisigaba 20, okungaba unyaka kuqalile ukusebenza kwalo mthetho, noma yimuphi umholi wendabuko obekwe kanjalo esikhundleni ngokushaywa komthetho weSifundazwe futhi kanti wabe esmukelekile njengomholi wendabuko ngaphambi kokuqala kokusebenza kwalo mthetho, uthathwa ngokuthi wamukelekile kanjalo ngokwalo mthetho, kodwa kuye ngokwezigatshana zalo Mthetho, bese ngemva kwalokho ukwamukeleka okunjalo kuyahoxiswa.

(5) Ukuze kuhlinzekele ukufezeka kokuhlanguka ngokwesigaba 2, okungaba unyaka kuqalile ukusebenza kwalo mthetho, noma yimuphi umphakathi osekulwe ngokwenqubo yendabuko owabe usumisiwe ngaphambi kokuqala kokusebenza kwalo mthetho futhi owabe sewamukelekile kanjalo, uthathwa ngokuthi ungumphakathi osekulwe ngokwenqubo yendabuko, bes kuya ngokuhoxiswa kokwamukeleka kwawongokuvumelana nezigatshana zesigaba 4, bese ngemva kwalokho ukwamukeleka okunjalo kuyahoxiswa.

#### Ukuchithwa kwemithetho

53.(1) Ukuchithwa koMthetho waKwaZulu omayelana noMgomo woMthetho wesiZulu, 1985 (uMthetho No. 16 ka 1985) kanye



noMgomo wase-Natali ngoMthetho wesiZulu, 1987 (iSimemezelo No. R 151 sika 1987) kuyoqala ngosuku oluyonqunywa yiLungu loMkhandlu oPhethe elengamele ngesaziso *kwiGazethi*.

(2) Imithetho esele eshiwo ohleni lokuqala nolwesibili loHlelo 3 ngendlela ebekiwe ohleni lwesithathu yalolo hlelo ngalokhu iyachithwa.

#### Isihloko esifingqiwe

54.(1) Lo Mthetho ubizwa ngoMthetho woBuholi noKubusa kweNdabuko waKwaZulu-Natali, 2005.

### UHLELO 1

#### UMgomo woKuziphatha kaZwelonke kanye noMgomo woKuziphatha weSifundazwe

(Isigaba 42)

#### INGXENYE A: — Umgomo woKuziphatha

##### Ukuziphatha okwejwayelekile

1. Bonke abaholi bendabuko, kanye namalungu eMikhandlu emiswe ngokwenqubo yendabuko, amalungu eNdlu yeSifundazwe yabaHoli beNdabuko, kanye namalungu eziNdlu zeSifunda zabaHoli beNdabuko bafanele —

- benze imisebenzi yabo ngobuqotho, ngokwethembeka nangendlela esobala;
- ngasonke isikhathi basebenzele imiphakathi abayiholayo;
- baqinisekise ukuthi isithunzi nobuqotho kobuholi bendabuko noma izimiso zendabuko akuphathwa budedengu.

##### Ukudalulwa Kwezinzuzo kanye Nemihlomulo

2.(a) Bonke abaholi bendabuko, kanye namalungu emikhandlu emiswe ngokwenqubo yeNdabuko, amalungu eNdlu yeSifundazwe yabaHoli beNdabuko, kanye namalungu eziNdlu zeSifunda zabaHoli beNdabuko bafanele —

- badalule noma iyiphi indlela abathola ngayo inzuzo, noma inzuzo kwezamabhini. Lokhu kuhlenganisa nokuzuzwa ngamakhosikazi abo, ozakwabo kwezamabhini uma nje lokhu ngaphansi kwalo Mthetho kungaphazamisa ukusebenza ngendlela egculisayo kwalelolu, futhi nokungadala ukushayisana kwemibono noma kwezinqumo emsebenzini welungu. Lapho lesi simo sivela lelo lungu elithintekayo kufanele lizihoxise lapho kunqunywa ngodaba oluthinteka kulokhu osekuchaziwe kulesi sigaba.
- bangasebenzi izikhundla zabo ezigunyazwa yiloMthetho ukuzizuzela bona, noma kusizakale abanye ngendlela engahambisani nalo Mthetho; futhi
- bangabi yingxenyane noma bazizuzele ngokwezivumelwano ezisayinwe iMikhandlu emiswe ngokwenqubo yeNdabuko, iNdlu yeSifundazwe yabaHoli beNdabuko, kanye neziNdlu zeSifunda zabaHoli beNdabuko lapho ilungu lelo lilungu khona ngaphandle kwemvume ebhaliweyo yalowo Mkhandlu noma yaleyo Ndlu.

(b) Noma ikuphi okudaluliwe noma okunqunywe ngokwalendinyana kufanele kubhalwe emaminithini omhlangano lapho lezi zinqumo zithathwe khona.

#### INGXENYE B: Umgomo Wokuziphatha Kazwelonke

##### Imithetho Ejwayelekile Yokuziphatha KwabaHoli BeNdabuko

1. UMholi weNdabuko kufanele —

- enze umsebenzi awunikeziwe ngokwethembeka, ngokukhuthala, ngobuqotho nangendlela esobala;
- enze umsebenzi wakhe ngendlela egculisayo;
- angaziphathi ngendlela elihlazo, engalungile nethunazayo;
- ahloniphe noma yimuphi umthetho;
- asebenzele umphakathi awuholayo;
- akakhuthaze ubunye phakathi kwemiphakathi esekelwe ngokwenqubo yendabuko;
- angenzi izezo ezingadala uqhekeko emiphakathini esekelwe ngokwenqubo yendabuko;
- akakhuthaze ukwakha isizwe;
- angali ukusiza abaholayo ngenxa yezombangazwe noma ngokushayisana ngemibono nabo;
- akhuthaze ubudlelwane obuhle ezakhiweni zombuso axhumana noma asebenzisana nazo;
- akhuthaze ukhlonishwa kwemigomo yenqubo yentando yeningi nompakathi ovulelekile, futhi;
- adalule zonke izipho ahlonishwe ngazo.

##### Umgomo wokuziphatha jikelele womkhandlu wendabuko

2. UMkhandlu omiswe ngokwenqubo yeNdabuko, kufanele —

- wenze imisebenzi owabelwe yona ngobuqotho, ngokwethembeka, ngokukhuthala nangendlela esobala;
- wenze imisebenzi yayo ngendlela egculisayo;
- uhloniphe yonke imithetho;
- usebenzele umphakathi owengameleyo;
- ulandele imigomo yokuphatha umphakathi ebalulwe ngokwesigaba 195 kuMthethosisekelo; futhi
- ukhuthaze ubudlelwane obuhle ezimisweni zikaHulumeni osebenzisana nazo.

### UHLELO 2

Isifungo noma ukuqinisa okunesizotha kwamalungu emikhandlu emiswe ngokwenqubo yendabuko kanye nokwamalungu eNdlu yeSifundazwe yabaHoli beNdabuko naweziNdlu zeSifunda zabaHoli beNdabuko

(Isigaba 43)

*Mina — ngiyafunga / ngiyaqinisa ngesizotha ukuthi ngayo yonke indlela esemandleni, ngiyokwethembeka kwiRiphabhili yeNingizimu Afrika, kwiSifundazwe saKwaZulu-Natal futhi ngiyowuthobela, ngiwuhloniphe futhi ngiwusekele uMthethosisekelo kanye nayo yonke*

*eminye imithetho yeRiphabhili yeseNingizimu Afrika kanye neyesifundazwe saKwaZulu-Natal; futhi ngiyathembisa ngesizotha ukuthi ngizoyenza imisebenzi yami njengelungu le [faka igama lapha elifanele lalowo Mkhandlu omiswe ngokwenqubo yendabuko, leNdlu yeSifundazwe noma lenNdlu yeSifunda yabaHoli beNdabuko].*

*(uma kuyisifungo: "Ngakho-ke, ngithi iNkosi ingisize!")*

**UHLELO 3**  
**Ukuchithwa kwemithetho**  
*(Isigaba 53)*

Inombolo kanye nonyaka wokumiswa komthetho	Isihloko	Ingxanye echithwayo
Isimemezelo No. R. 110 sika 1957	Imithethonqubo enquma ngemisebenzi, amandla, izibonelelo kanye nemibandela yokusebenza kwamakhosi nezinduna, 1957	Yonke
UMthetho No. 7 ka 1974	UMthetho weNtela yeSizwe waKwaZulu, 1974	Wonke
UMthetho No. 17 ka 1979	UMthetho weMithethonqubo yeZezimali zoMaziphathe beSizwe neMiphakathi, 1979	Wonke
UMthetho No. 16 ka 1985	UMthetho waKwaZulu ngoMgomo woMthetho wesiZulu, 1985	Wonke
Isimemezelo No. R151 sika 1987	UMgomo wase-Natali woMthetho wesiZulu, 1987	Wonke
UMthetho No. 9 ka 1990	UMthetho waKwaZulu-Natali waMakhosi neZiphakanyiswa	Wonke
UMthetho No. 6 ka 1993	UMthetho waKwaZulu woKukhokhelwa kwaMaholo neZibonelelo iNgonyama	Wonke
UMthetho No. 2 ka 1994	UMthetho waKwaZulu-Natali woKukhokhelwa ngoKomthetho, 1994	Wonke
UMthetho No. 7 ka 1994	UMthetho waKwaZulu-Natali weNdlu yaBaholi beNdabuko, 1994	Wonke
UMthetho No. 5 ka 1995	UMthethosichibiyelo waKwaZulu-Natali waMakhosi neZiphakanyiswa	Wonke
Isaziso seSifundazwe No. 243 sika 2000	Imizamo yesikhashana yoguquko: Ukuqokwa kweKomidi loKukhuthaza oMasipala endaweni yesifunda sase-DC 29, 2000	Wonke

No. 5, 2006

16 January 2006

*[English text signed by the Premier]*

**KWAZULU-NATAL TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2005**  
**(Act No. 5 of 2005)**  
Assented to on 2005-12-01

## ACT

**To provide for the recognition of traditional communities; to provide for the establishment and recognition of traditional councils; to provide for the recognition of traditional leaders, and for their roles and functions; to provide for the recognition of *Isilo* as the Monarch of the Province of KwaZulu-Natal; to provide for the removal of a traditional leader from office; to provide for Houses of Traditional Leaders; to provide for a Code of Conduct for traditional leaders; to provide for the repeal of certain laws; and to provide for incidental matters.**

### PREAMBLE

WHEREAS the Province of KwaZulu-Natal, in accordance with the Constitution and the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), acknowledges the existence of traditional communities in the Province, and seeks to —

- (a) recognise, protect, transform, and provide an enabling environment for the development of traditional communities, traditional institutions, customary law and customs; and
- (b) transform the institution and role of traditional leadership to be in harmony with the system of democratic governance in South Africa;

AND WHEREAS the Provincial Government of KwaZulu-Natal wishes to enact legislation in support of the principles and duties imposed upon it by the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003),

BE IT THEREFORE ENACTED by the Legislature of the Province of KwaZulu-Natal, as follows:—

## ARRANGEMENT OF SECTIONS

*Section*CHAPTER 1  
INTERPRETATION AND APPLICATION

1. Definitions, interpretation and application

CHAPTER 2  
TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS

2. Recognition of traditional communities
3. Traditional communities and constitutional principles
4. Admission of new individuals into existing traditional communities
5. Withdrawal of recognition of traditional communities
6. Establishment and recognition of traditional councils
7. Term of office and filling of vacancies
8. Functions of traditional councils
9. Administration of justice
10. Partnership between traditional councils and municipalities
11. Support to traditional councils
12. Staffing of traditional councils
13. Meetings of traditional councils
14. Minutes of meetings
15. Subsistence and traveling allowances for members of traditional councils

CHAPTER 3  
LEADERSHIP POSITIONS WITHIN THE INSTITUTION OF TRADITIONAL LEADERSHIP

16. Recognition of traditional leadership positions
17. Recognition of *Isilo* as Monarch
18. Roles and duties of *Isilo* as Monarch
19. Recognition of an *Inkosi*
20. Roles and functions of *Amakhosi*
21. Removal of traditional leader
22. Power of Executive Council to summon traditional leaders
23. Inquiry into misconduct
24. Suspension of traditional leader
25. Absence of traditional leader
26. Designated person
27. *Izinduna*
28. Support of traditional structures
29. *Iziphakanyiswa*
30. *Ibambabukhosi*

CHAPTER 4  
HOUSES OF TRADITIONAL LEADERS

31. Traditional Leadership Structures
32. Establishment of KwaZulu-Natal Provincial House of Traditional Leaders
33. Composition and term of office of Provincial House
34. Roles and functions of Provincial House
35. Meetings of Provincial House
36. Establishment of Local Houses of Traditional Leaders

- 37. Composition of Local Houses
- 38. Meetings of Local Houses
- 39. Roles and functions of Local Houses
- 40. Referral of legislation

CHAPTER 5  
GENERAL PROVISIONS

- 41. General duties
- 42. Code of Conduct
- 43. Oath of office
- 44. Regulatory powers
- 45. Act binds State
- 46. Juristic personality
- 47. Assets, liabilities and resources
- 48. Delegation of powers, assignments, agency and service delivery agreements
- 49. Dispute resolution
- 50. Cross-boundary arrangements
- 51. Offences and penalties
- 52. Transitional arrangements
- 53. Repeal of laws
- 54. Short title

SCHEDULES

- Schedule 1: Code of Conduct
- Schedule 2: Oath of Office
- Schedule 3: Repeal of laws

CHAPTER 1  
DEFINITIONS, INTERPRETATION AND APPLICATION

**Definitions, interpretation and application**

1.(1) In this Act, unless the context otherwise indicates —

“**Code of Conduct**” means the Code of Conduct contained in Schedule 1 to this Act;

“**Commission**” means the Commission on Traditional Leadership Disputes and Claims established by section 22 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**customary institution or structure**” means those institutions or structures established in terms of customary law;

“**Department**” means the department in the Provincial Government of KwaZulu-Natal responsible for traditional affairs;

“**district municipality**” means a municipality that has municipal executive and legislative authority in an area that includes more than one local municipality, as contemplated in section 5 of the KwaZulu-Natal Determination of Types of Municipalities Act, 2000 (Act No. 7 of 2000), and which is described in section 155(1)(c) of the Constitution as a category C municipality;

“**Executive Council**” means the Executive Council of the Province contemplated by sections 125(2) and 132 of the Constitution;

“**Gazette**” means the official *Provincial Gazette* of the Province;

“**Head of Department**” means the most senior officer of the department in the Provincial Government of KwaZulu-Natal responsible for traditional affairs;

“**Ibambabukhosi**” means a regent or an acting traditional leader appointed in terms of section 30;

“**Imbizo**” means a consultative meeting of the members of a traditional community called in accordance with custom;

“**Induna**” means a traditional leader who is under the authority of, or exercises authority within the area of jurisdiction of, an *Inkosi* in accordance with customary law, and who is recognised as such in terms of section 27, and “**Izinduna**” and “**Ubuduna**” have a corresponding meaning;

“**Inkosi**” means a senior traditional leader as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), and recognised as such in terms of section 19 of this Act and “**Amakhosi**” has a corresponding meaning;

“**Isilo**” means the Monarch for the Province of KwaZulu-Natal, as recognised in section 17, or “king” as defined in section 1 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“*Isiphakanyiswa*” means an *Inkosi* who holds office in terms of a customary electoral procedure or appointment, and “*Iziphakanyiswa*” has a corresponding meaning;

“**Local House**” means a Local House of Traditional Leaders referred to in section 36;

“**responsible Member of the Executive Council**” means the Member of the Executive Council responsible for traditional affairs in the Province;

“**municipal council**” means a municipal council as referred to in Chapter 7 of the Constitution;

“**municipality**” means a municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

“**Premier**” means the Premier of the Province of KwaZulu-Natal;

“**President**” means the President of the Republic of South Africa;

“**prescribed**” means prescribed by regulation in terms of this Act and “**prescribe**” has a corresponding meaning;

“**Province**” means the Province of the KwaZulu Natal contemplated by section 103 of the Constitution;

“**Provincial Government**” means the government of the Province of KwaZulu-Natal;

“**Provincial House**” means the Provincial House of Traditional Leaders referred to in section 32;

“**Provincial Legislature**” means the Legislature of the Province of KwaZulu-Natal;

“**regulations**” means regulations made in terms of section 44;

“**Royal Family**” means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community, who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family;

“**this Act**” includes the regulations and notices issued in terms of this Act;

“**traditional community**” means a traditional community recognised as such in terms of section 2;

“**traditional council**” means a council established in terms of section 6;

“**traditional leader**” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position as *Isilo*, *Inkosi* or *Induna*, and who is recognised in terms of this Act or in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), and “**traditional leadership**” has a corresponding meaning;

“*umndeni wenkosi*” means the immediate relatives of an *Inkosi*, who have been identified in terms of custom or tradition, and includes, where applicable, other persons identified as such on the basis of traditional roles.

(2) Nothing contained in this Act may be construed as precluding members of a traditional community from addressing a traditional leader by the traditional title accorded to him or her by custom, but such traditional title does not derogate from, or add anything to, the status, role and functions of a traditional leader as provided for in this Act.

(3) Traditional leaders may acknowledge or recognise the different levels of seniority among themselves in accordance with customs, and none of the definitions contained in subsection (1) may be construed as conferring, or detracting from, such seniority.

## CHAPTER 2

### TRADITIONAL COMMUNITIES AND TRADITIONAL COUNCILS

#### Recognition of traditional communities

2.(1) A community may be recognised as a traditional community if it —

- (a) is subject to the system of traditional leadership in terms of that community's customs; and
- (b) observes a system of customary law.

(2) A community may, in writing, apply to the Premier to be recognised as a traditional community.

(3) An application referred to in subsection (2) must contain a description of the community, including the following particulars —

- (a) an indication of the size of the community;
- (b) the generally accepted name of the community;
- (c) the name of the *Inkosi* under whose authority the community falls;
- (d) the names of persons who the community regards as their leaders and their designation in terms of applicable custom; and
- (e) a description of the area within which the community generally resides.

(4) On receipt of an application referred to in subsection (2), the Premier —

- (a) must refer the application to the responsible Member of the Executive Council for comment or advice; and
- (b) must refer the application to the Provincial House of Traditional Leaders.

(5) The Premier must, within three months after the receipt of an application referred to in subsection (2) —

- (a) consult *Isilo*, Provincial House of Traditional Leaders, the community concerned, and, if applicable, the *Inkosi* under whose authority that community would fall, on the application;
- (b) take a decision on whether to recognise the community concerned as a traditional community, and such decision, must be published by notice in the *Gazette*; and
- (c) inform the community of the decision referred to in paragraph (b).

(6) The Premier, must, in terms of this section, issue a certificate of recognition to a community that has been recognised as a traditional community.

**Traditional communities and constitutional principles**

3. A traditional community must transform and adapt customary law and custom so as to comply with the principles enshrined in the Constitution, in particular by —
- (a) preventing unfair discrimination;
  - (b) promoting equality; and
  - (c) seeking to progressively advance gender representation in the succession to traditional leadership positions.

**Admission of new individuals into existing traditional communities**

4. *Inkosi*-in-council may admit any new individual into an existing traditional community in compliance with rules and customs of that community, and subject to the provisions of the Constitution.

**Withdrawal of recognition of traditional communities**

- 5.(1) The Premier must consider the withdrawal of the recognition of a community as a traditional community where —
- (a) the traditional community concerned requests the Premier in writing to withdraw its recognition as a traditional community;
  - (b) the Premier has been requested by the traditional community or traditional communities concerned to review the position of that traditional community or traditional communities that was or were divided or merged prior to 1994 in terms of the applicable legislation; or
  - (c) two or more recognised traditional communities request the Premier that they be merged into a single traditional community.
- (2) The recognition of a community as a traditional community is withdrawn where —
- (a) the Premier accedes to the request of a community to withdraw the recognition of that community as a traditional community;
  - (b) a review envisaged by subsection (1)(b) indicates that —
    - (i) an existing traditional community that came about as a result of a merger prior to 1994 in terms of applicable legislation should be divided; or
    - (ii) two or more traditional communities that came about as a result of a division prior to 1994 in terms of applicable legislation should be merged; or
    - (iii) the Premier accedes to the request of two or more traditional communities to be merged into one traditional community.
- (3) The Premier must consult with *Isilo*, the Provincial House of Traditional Leaders and any community that may be affected before the withdrawal of the recognition of a traditional community may be effected.
- (4) The withdrawal of the recognition of a traditional community must be done by notice in the *Gazette*.
- (5) The notice referred to in subsection (4), must, also provide for the withdrawal of the recognition of the traditional council concerned at the same time the recognition of its traditional community is withdrawn.

**Establishment and recognition of traditional councils**

- 6.(1) A traditional community that has been recognised as such in terms of section 2, must, within three months after the community has been informed accordingly in terms of section 2(5)(c), and subject to section 3 of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), establish a traditional council as provided for in this section.
- (2) The number of members of a traditional council —
- (a) must be determined by the Premier in accordance with a formula determined by the responsible Member of the Executive Council by notice in the *Gazette*, which formula must take into account the population of the traditional community in question;
  - (b) may not be more than 30; and
  - (c) must comprise of at least one-third women.
- (3) The following principles apply to the establishment of a traditional council —
- (a) taking into account the need for compliance with the provisions of subsection (2), *Inkosi* of that traditional community must select 60 percent of the members of the traditional council from the traditional leaders and members of the traditional community, in terms of that community's customs;
  - (b) the remaining members of that traditional council, who must constitute 40 percent thereof, must be elected from other members of that traditional community, in a democratic manner, at an *imbizo* specially convened for that purpose, and called by *Inkosi* concerned;
  - (c) *Inkosi* must, announce the names of the members of the traditional council selected by him or her in terms of subsection (3)(a) before the remaining members of the traditional council are elected;
  - (d) the members of the traditional council hold that office on a voluntary basis for a period of five years.
- (4) The relevant *Inkosi* must, submit the names of the members of the traditional council and the particulars of the establishment of that traditional council to the Premier in writing within two weeks of the establishment of that council in terms of subsection (1).
- (5) Where an insufficient number of women are available to participate in the traditional council as envisaged in subsections (3)(a) and (b), the relevant *Inkosi* concerned must submit proof to the Premier, that an insufficient number of women are available to so participate.
- (6) On receipt of the information referred to in subsections (4) or (5), the Premier must consider whether the establishment of the traditional council concerned was done in accordance with this section and section 3 of the Traditional Leadership and Governance Framework Act, 2003.
- (7) Where subsection (5) is not applicable, and if the Premier is satisfied that this section and section 3 of the Traditional Leadership and Governance Framework Act, 2003, have been complied with, the Premier must by notice in the *Gazette* recognise the traditional council and determine the area of its jurisdiction.
- (8) Where subsection (5) is applicable, the Premier may, if he or she is satisfied after consultation with the traditional community con-

cerned that it has been proved that there is an insufficient number of women available to participate in the traditional council, determine a lower threshold than that required by section 3(2)(b) of the Traditional Leadership and Governance Framework Act, 2003 for that traditional council.

(9) After the Premier has determined a lower threshold in terms of subsection (8), and the Premier is satisfied that the other provisions of this section and section 3 of the Traditional Leadership and Governance Framework Act, 2003, have been complied with, the Premier must, by notice in the *Gazette*, recognise the traditional council and determine the area of its jurisdiction.

(10) The Premier must —

- (a) review the lower threshold referred to in subsection (8) every five years; and
- (b) by notice in the *Gazette*, redetermine or confirm the lower threshold.

(11) Subsection (10)(b) must be complied with until such lower threshold has been set aside.

(12) Any dispute concerning the boundaries of the areas of jurisdiction of traditional councils, must be dealt with in terms of section 25 of the Traditional Leadership and Governance Framework Act, 2003: Provided that should a dispute occur after the dissolution of the Commission, such dispute must be dealt with in accordance with mechanisms as the Premier may determine.

#### **Term of office and filling of vacancies**

7.(1) A vacancy amongst members of a traditional council occurs when —

- (a) a member resigns in writing;
- (b) the term of office of the members has expired;
- (c) a member dies; or
- (d) a member for any other reason is no longer a member.

(2) A vacancy amongst —

- (a) the selected members of a traditional council must be filled within six weeks of the vacancy occurring by the relevant *Inkosi* selecting a member of the traditional community to fill the vacancy; or
- (b) the elected members of a traditional council must be filled within three weeks of a vacancy occurring by electing members of the traditional community in terms of subsection (3)(b) to fill the vacancy.

#### **Functions of traditional councils**

8.(1) The functions of traditional councils are —

- (a) to administer the affairs of the traditional community in accordance with customs and tradition;
- (b) to assist, support and guide traditional leaders in the performance of their functions;
- (c) to work together with municipalities in the identification of community needs;
- (d) to facilitate the involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose areas that community resides;
- (e) to recommend, after consultation with the relevant Local House and the Provincial House of Traditional Leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;
- (f) to participate in the development of policy and legislation at local level;
- (g) to participate in the development programmes of municipalities and of the provincial and national spheres of government;
- (h) to promote the ideals of co-operative governance, integrated development planning, sustainable development and service delivery;
- (i) to promote indigenous knowledge systems for sustainable development and disaster management;
- (j) to alert any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and to contribute to disaster management in general;
- (k) to share information and co-operate with other traditional councils;
- (l) to perform the functions conferred by customary law, customs and statutory law consistent with the Constitution;
- (m) to uphold the values of the traditional community;
- (n) to reject and proscribe such practices as the sowing of divisions based on tribalism;
- (o) to promote peace and stability amongst members of traditional communities; and
- (p) to promote social cohesion within the traditional community.

(2) A traditional council must —

- (a) keep proper records;
- (b) have its financial statements audited by the Auditor-General;
- (c) disclose the receipt of gifts;
- (d) hold an annual meeting with its traditional community to give account of the activities and finances of the traditional council; and
- (e) adhere to the Code of Conduct.

#### **Administration of justice**

9. The traditional council must exercise such powers and perform such duties and functions in connection with the administration of justice as may be conferred on or assigned to it by law.

#### **Partnership between traditional councils and municipalities**

10.(1) The Provincial Government must promote partnerships between municipalities and traditional councils through legislative and other measures.

(2) The partnership envisaged in subsection (1) must be based on the principle of mutual respect and recognition of the status and roles of the parties.

(3) Without derogating from the generality of subsection (1), a traditional council may submit a proposal to the municipal council to

adopt a by-law, which the traditional council may consider to be necessary in respect of any matter directly affecting the area of its jurisdiction.

- (4) The proposal envisaged in subsection (3), may be accompanied by a draft of the proposed by-law and must be motivated in writing.
- (5) The municipal council must consider the proposed by-law at its next meeting and may request comments from its municipal manager.
- (6) In the event that the municipal council does not accept the proposed by-law, the municipal council must, in writing, inform the traditional council of its decision and must give reasons for its decision.

#### Support to traditional councils

11.(1) The Provincial Government or the relevant municipal council may adopt such legislative or other measures as may be necessary to support and strengthen the capacity of traditional councils to fulfill their functions.

(2) The Provincial Government or the relevant municipal council may, within that sphere of government's means, give traditional councils support to enable the traditional councils to perform their functions.

(3) The support envisaged in this section may include transport assistance where it is feasible taking into consideration budgetary constraints.

#### Staffing of traditional councils

12.(1) The Provincial Government or the relevant municipal council may, in accordance with applicable legislation and within the limitations of available financial and human resources, make provision for staffing, which may include, secondment of staff to traditional councils, taking into consideration the extent of the areas of jurisdiction of traditional councils and the needs of its residents.

(2) The personnel seconded to traditional councils must report to a person designated by the relevant *Inkosi* under whose area of jurisdiction the relevant traditional council falls.

- (3) Any unacceptable behaviour or conduct of the personnel seconded to traditional councils must —
- (a) in the case of staff seconded by Provincial Government, be reported to a person designated by the responsible Member of the Executive Council; or
  - (b) in the case of staff seconded by the municipal council, be reported to the municipal manager of the municipal council responsible for such seconded personnel,
- who must decide whether any disciplinary steps should be taken against such personnel in accordance with the applicable law.

#### Meetings of traditional councils

13.(1) *Inkosi* must, within 21 days after the establishment of a traditional council in terms of section 6, convene the first meeting of the traditional council.

(2)(a) Meetings of traditional councils are chaired by the *Inkosi* under whose area of jurisdiction the traditional council falls, unless the *Inkosi* is absent from a meeting, in which event that meeting will be chaired by the deputy chairperson.

(b) The deputy chairperson of a traditional council is elected by the members of that traditional council in its first meeting.

(c) In the event that both the chairperson and deputy chairperson are absent from a meeting, that meeting will be chaired by an acting chairperson, elected by the members who are present, from one of their number.

(3) Every traditional council must hold an ordinary meeting each month on a day and time determined by the chairperson.

(4) A written notice of the meeting must be given to all members of the traditional council at least four days prior to the date of the meeting.

(5) The procedure to be followed at any meeting of the traditional council must be in accordance with customary law and customs.

(6) A special meeting may be called by the chairperson or two members of the traditional council, to discuss a specific agenda item which cannot wait for a scheduled meeting.

#### Minutes of meetings

14.(1) Every traditional council must keep minutes of each of its meetings in which the following must be recorded —

- (a) the date, time and place of the meeting;
- (b) the names of the members present;
- (c) a summary of every decision taken at the meeting; and
- (d) if a member so requests, the fact that he or she voted against any decision taken.

(2) A copy of the minutes must, within fifteen days after any meeting, be forwarded to an officer in the Department designated by the responsible Member of the Executive Council for this purpose.

#### Subsistence and traveling allowances for members of traditional councils

15. The Premier, in consultation with the Member of the Executive Council responsible for finance, may determine the subsistence and traveling allowances payable to members of traditional councils.

### CHAPTER 3

#### LEADERSHIP POSITIONS WITHIN THE INSTITUTION OF TRADITIONAL LEADERSHIP

#### Recognition of traditional leadership positions

16. The following traditional leadership positions are recognised —

- (a) *Isilo*;



- (b) *Amakhosi*; and
- (c) *Izinduna*.

#### Recognition of *Isilo* as Monarch

17.(1) *Isilo* is hereby recognised as the Monarch of the Province.

- (2) *Isilo* must be appointed in terms of customary law and customs, subject to this Act.
- (3) Whenever the position of *Isilo* is to be filled, the following process must be followed —
- (a) the royal family must, within a reasonable time after the need arises for the position of *Isilo* to be filled, and with due regard to applicable customary law —
    - (i) identify a person who qualifies in terms of customary law to assume the position of *Isilo* after taking into account whether any of the grounds referred to in section 10(a), (b) or (d) of the Traditional Leadership and Governance Framework Act, 2003, apply to that person;
    - (ii) provide the Premier and the responsible Member of the Executive Council with the name and the reasons for the identification of that person as *Isilo*; and
    - (iii) the Premier must advise the President accordingly;
  - (b) the person identified as contemplated in paragraph (a)(i), must be recognised as *Isilo*, as provided for in sections 9(1)(b) and 9(2) of the Traditional Leadership and Governance Framework Act, 2003.
- (4) The Premier must inform the National and Provincial Houses of Traditional Leaders of the recognition or appointment of *Isilo*.
- (5) The Premier may arrange a special ceremony to enable *Isilo* to affirm his allegiance and faithfulness to the Republic of South Africa and the Province and to obey, respect, and uphold the Constitution and the law.

#### Roles and duties of *Isilo* as Monarch

18.(1) The duties of *Isilo* are —

- (a) to uphold the Constitution and the law;
  - (b) to promote national and provincial unity;
  - (c) to carry out functions of *Isilo* in accordance with customary law;
  - (d) to meet once a year with other South African traditional leaders;
  - (e) to perform such ceremonial duties as required by the provincial government, including the opening of the Provincial Legislature;
  - (f) to support and develop communities that are recognised as traditional communities, and to officiate at the traditional installation ceremony of all *Amakhosi* in addition to other customary responsibilities;
  - (g) to cooperate with the Executive Council in —
    - (i) conferring honours and distinctions;
    - (ii) meeting foreign dignitaries;
    - (iii) representing the Province culturally and socially both within the Republic of South Africa and abroad; and
    - (iv) addressing sessions or meetings of provincial intergovernmental bodies or structures.
- (2) *Isilo* may appoint any person or persons in accordance with customs and traditions, to perform specific functions and rituals arising from his duties under subsection (1).

#### Recognition of an *Inkosi*

19.(1) Whenever the position of an *Inkosi* is to be filled, the following process must be followed —

- (a) *Umndeni wenkosi* must, within a reasonable time after the need arises for the position of an *Inkosi* to be filled, and with due regard to applicable customary law and section 3 —
    - (i) identify a person who qualifies in terms of customary law to assume the position of an *Inkosi* after taking into account whether any of the grounds referred to in section 21(1)(a), (b) or (d) apply to that person;
    - (ii) provide the Premier with the reasons for the identification of that person as an *Inkosi*; and
    - (iii) the Premier must, subject to subsection (3) and section 3, recognise a person so identified in terms of subsection (1)(a)(i) as an *Inkosi*.
- (2) The recognition of a person as an *Inkosi* in terms of subsection (1)(a)(iii) must be done by way of —
- (a) a notice in the *Gazette* recognising the person identified as an *Inkosi*; and
  - (b) the issuing of a certificate of recognition to the identified person.
- (3) The Premier must inform the Provincial House of Traditional Leaders of the recognition or appointment of an *Inkosi*.
- (4) Where there is evidence or an allegation that the identification of a person to be appointed as an *Inkosi* was not done in accordance with customary law, customs or processes, or was done in contravention of section 3 of this Act, the Premier —
- (a) may refer the matter to the Provincial House of Traditional Leaders for comment; or
  - (b) may refuse to issue a certificate of recognition; and
  - (c) must refer the matter back to *umndeni wenkosi* for reconsideration and resolution where the certificate of recognition has been refused.
- (5) Where the matter which has been referred back to *umndeni wenkosi* for reconsideration and resolution in terms of subsection (4) has been reconsidered and resolved, the Premier must recognise the person identified by *umndeni wenkosi* if the Premier is satisfied that the reconsideration and resolution by *umndeni wenkosi* has been done in accordance with customary law.
- (6) The recognition of an *Inkosi* as the senior traditional leader of a recognised traditional community takes effect on a date specified in a notice published in the *Gazette* by the Premier.
- (7) Within three weeks after the date of recognition or the date of publication of the notice referred to in subsection (6), whichever is the later date, an *Inkosi* so recognised must furnish, in writing, to the Premier the names of *Induna* or *Izinduna* of that *Inkosi*, together with the date of and names of all members present at the traditional council at which the appointment of such *Induna*, or *Izinduna* was unanimously approved by the traditional council.

(8)(a) An *Inkosi* is deemed to retire from office upon his or her written request for retirement to the responsible Member of the Executive Council.

(b) On retirement, an *Inkosi* ceases to be recognised and appointed in terms of this Act.

#### Roles and functions of Amakhosi

20.(1) *Amakhosi* must —

- (a) uphold the Constitution and the law and ensure that the members of his or her traditional community have the rights enshrined in the Constitution, including the rights to freedom of political activity and freedom of association;
- (b) promote democracy, provincial unity and uphold national and provincial legislation;
- (c) carry out customary functions not inconsistent with national and provincial legislation, and consistent with an open and democratic society; and
- (d) preserve and foster knowledge and understanding of *Zulu* culture, history and tradition.

(2) Each *Inkosi* must —

- (a) convene and report to meetings of his or her traditional council at least every two months;
- (b) convene and report to a meeting of his or her traditional community at a meeting called every three months;
- (c) attend special consultative meetings of the Provincial House of Traditional Leaders when such meetings are called;
- (d) participate in municipal councils if identified to do so in terms of section 81 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and
- (e) carry out any functions prescribed for *Amakhosi* by the responsible Member of the Executive Council;
- (f) maintain law and order and report to the responsible Member of the Executive Council without delay any matter or concern, including any condition of unrest or dissatisfaction;
- (g) ensure the protection of life, persons and property and the safety of travelers within his or her area of jurisdiction, and report forthwith to the relevant department in the Provincial Government or municipality, or any other relevant authority —
  - (i) the death of any person from violence or any other unnatural causes;
  - (ii) the outbreak of any contagious or infectious disease;
  - (iii) any misuse of government property;
  - (iv) any irregular receipt or use of public moneys; and
  - (v) the commission of any offence, which does not fall, to be dealt with under his or her own jurisdiction;
- (h) ensure that the members of his or her traditional community may, peacefully and unarmed, exercise the constitutional rights of free political activity and choices, freedom of association, freedom of expression, freedom of assembly and demonstration, and freedom of religion, belief and opinion;
- (i) make known to the residents of his or her area the requirements of any new law;
- (j) ensure compliance with all laws and orders and instructions of a competent authority;
- (k) prevent cruelty to animals;
- (l) when so required by law, impound any livestock depastured illegally or found straying within, or introduced unlawfully or under suspicious circumstances into his or her area, and report the matter to a competent authority; and
- (m) generally, seek to promote the interest of his or her traditional community and of the region, and to actively support and initiate measures for the advancement of the community.

(3) An *Inkosi* may not become a member, or take part in any activities, or in any manner promote the objects of any organisation whose aims or activities involve —

- (a) the unconstitutional overthrow of the government;
- (b) propaganda for war;
- (c) the incitement of imminent violence or disobedience to any law; or
- (d) the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

(4) If an *Inkosi* fails to comply with national or provincial legislation, or refuses to carry out any duty required of him or her by this Act, he or she must be subject to an enquiry contemplated by section 23.

#### Removal of traditional leader

21.(1) A traditional leader may be removed from office on the grounds of —

- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that *Inkosi* to function as such;
- (c) wrongful appointment or recognition;
- (d) a transgression of a customary rule or principle that warrants removal;
- (e) a breach of the Code of Conduct; or
- (f) misconduct as contemplated in section 23.

(2) Whenever any of the grounds referred to in subsection (1)(a), (b), (c), (d) and (e) come to the attention of *umndeni wenkosi*, and *umndeni wenkosi* concerned decides to remove a traditional leader, *umndeni wenkosi* may, within a reasonable time and through the relevant customary structure —

- (a) inform the Premier of the particulars of the traditional leader to be removed from office; and
- (b) furnish reasons for such removal.

(3) A traditional leader may only be removed from office on the grounds set out in subsections (1)(a), (b) or (c) above after he or she has been given an opportunity to submit representations in response to the grounds upon which his or her removal from office have been considered, and those representations have been considered by the appropriate authority.

(4) A traditional leader may only be removed from office on the grounds set out in subsections (1)(d), (e) or (f) above after an inquiry in terms of section 23.

(5) Where it has been decided to remove a traditional leader in terms of section 23 the Premier must —

- (a) withdraw the certificate of recognition with effect from the date of removal;

- (b) publish a notice in the *Gazette* with particulars of the removed traditional leader; and
- (c) inform *umndeni wenkosi* and the removed traditional leader concerned, and the Provincial House of Traditional Leaders of such removal.

(6) Where a traditional leader is removed from office, a successor may be appointed in terms of this Act and in accordance with prevailing customary law and custom.

#### Power of Executive Council to summon traditional leaders

22.(1) The Executive Council may, whenever it deems it necessary, summon any traditional leader in writing to appear before it in order to investigate —

- (a) any matter which is harming or is likely to harm the traditional community concerned;
- (b) any matter of importance or concern which directly or indirectly affects such traditional leader in his or her capacity as such, or which affects the Provincial Government in the performance of its functions; or
- (c) any other matter likely to prejudicially affect the administration of the Provincial Government in the area of the traditional community concerned.

(2) The Executive Council may, after it has considered the matter —

- (a) direct the traditional leader to take certain steps to resolve the problem;
- (b) instruct the responsible Member of the Executive Council to institute an inquiry in terms of section 23 whenever there is reason to believe the traditional leader is guilty of misconduct.

#### Inquiry into misconduct

23.(1) Whenever there is reason to believe that a traditional leader is guilty of misconduct in that he or she —

- (a) fails or refuses to comply with the provisions of this Act or any other law with which it is his or her duty to comply;
- (b) has breached the Code of Conduct;
- (c) disobeys, disregards or willfully defaults in carrying out a lawful order given to him or her by a competent authority;
- (d) conducts him or herself in a disgraceful, improper or unbecoming manner;
- (e) displays insubordination;
- (f) uses intoxicants or drugs excessively;
- (g) abuses his or her powers or extorts, or by the use of compulsion or arbitrary means obtains any tribute, fee, reward or gift;
- (h) tries or punishes any person without the necessary authority to do so;
- (i) is negligent or indolent in the discharge of his or her duties; or
- (j) has been convicted of an offence,

the responsible Member of the Executive Council must charge the traditional leader in writing with such misconduct.

(2) The charge referred to in subsection (1) must —

- (a) set out particulars of the allegations which have been made against the traditional leader; and
- (b) direct the traditional leader to respond to the allegations in writing within 21 days, which response must be an admission or denial of the allegations, and which may be accompanied by a written explanation of the circumstances surrounding the matter.

(3) If the traditional leader denies the charge or fails to respond thereto within the specified time, the responsible Member of the Executive Council must appoint a presiding officer to conduct an enquiry into the allegations.

(4) The presiding officer appointed in terms of subsection (3) above must convene an enquiry into the allegations, and must give the traditional leader who has been charged no less than 14 days notice of the date, time and place of the enquiry.

(5) At the enquiry the traditional leader charged must be granted the right to be heard, either personally or through a legal representative, and may cross-examine any person called as a witness by the presiding officer conducting the enquiry, inspect any document produced in evidence, give evidence in person, and call any other persons as witnesses.

(6) The presiding officer must keep a record of the proceedings of the enquiry.

(7) The presiding officer may subpoena any person to attend the enquiry and to adduce evidence relating to the charge against the traditional leader.

(8) Any person subpoenaed in terms of subsection (7) who fails to attend the enquiry at the time, date and place specified in the subpoena commits an offence, and may on conviction be sentenced to a fine not exceeding R10,000.00, or to imprisonment not exceeding a period of six months.

(9) The failure of the traditional leader charged to attend the enquiry without a valid reason, either personally or by a legal representative, does not invalidate the proceedings against him or her.

(10) At the conclusion of the enquiry the presiding officer must forward to the Executive Council his or her findings, the record of the proceedings, any observations and recommendations which he or she may wish to make, and (if applicable) any recommended sanction.

(11) The Executive Council may, after considering a finding of misconduct, any comments and recommendation of the presiding officer, together with any representations made by the traditional leader concerned, impose on that traditional leader either one or more of the following sanctions —

- (a) a formal written warning;
- (b) a suspension order without remuneration for a period not exceeding three months;
- (c) a fine, not exceeding an amount equal to three month's remuneration, which may be recovered from remuneration paid to him or her in terms of the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), in such instalments as the Executive Council may determine, and which must be paid into the Provincial Revenue Fund; or
- (d) a notice withdrawing recognition of that traditional leader.

(12) Any sanction as contemplated in subsection (11) imposed by the Executive Council must be published by notice in the *Gazette*.

(13) The finding of the presiding officer and the sanction imposed by the Executive Council is final.

**Suspension of traditional leader**

24.(1) The responsible Member of the Executive Council may, after consultation with the Premier, suspend from office any traditional leader who is suspected of misconduct pending the finalization of proceedings instituted in terms of sections 22 and 23 of this Act.

(2) Any traditional leader who has been suspended under this section is not entitled to any remuneration during the period of his or her suspension: Provided that the responsible Member of the Executive Council may for good and sufficient reason, and upon representations from the said traditional leader, order payment of the whole or a portion of the remuneration due to that traditional leader during his or her suspension.

(3) The responsible Member of the Executive Council or the Executive Council may, after consultation with the Premier, withdraw the suspension of a traditional leader.

(4) *Ibambabukhosi* may be appointed in accordance with the provisions of this Act to act for any suspended traditional leader where the responsible Member of the Executive Council deems it necessary.

**Absence of traditional leader**

25. A traditional leader may not absent himself or herself from the area of his or her traditional community for a period longer than thirty days without the prior approval of the responsible Member of the Executive Council or an officer in the Department designated by the responsible Member of the Executive Council, and must make provision for the proper performance of his or her duties during any absence.

**Designated person**

26.(1) An *Inkosi* may, after consultation with *umndeni wenkosi*, appoint a designated person to act in his or her stead whenever that *Inkosi* —

- (a) becomes a full-time member of a municipal council;
- (b) is elected as a member of the provincial legislature;
- (c) is elected as a member of the National Assembly;
- (d) is appointed as a permanent delegate in the National Council of Provinces; or
- (e) is elected to, or appointed in, a full-time position in any house of traditional leaders.

(2) Where a designated person has been appointed to act in the position of an *Inkosi* in terms of this section, the *Inkosi* must advise the Premier accordingly, and the Premier must —

- (a) inform the Provincial House of Traditional Leaders of such recognition;
- (b) thereafter recognize the designated person so appointed within a reasonable time by notice in the *Gazette*; and
- (c) within a period of thirty days after the date of publication of the notice recognizing the designated person, issue to the person who is identified in terms of subsection (1), a certificate of recognition.

(3) The recognition contemplated in subsection (2) lapses at the end of the membership, appointment or election contemplated in subsection (1).

(4) The designated person may be removed from office on the same grounds and following the same procedure as that which apply to an *Inkosi*.

(5) The designated person may, perform the same functions that are attached to the *Inkosi* for whom, he or she acts.

**Izinduna**

27.(1) *Izinduna* may carry out the customary functions of representatives of, and assistants to, *Inkosi*.

(2) *Izinduna* may be appointed within a community that has been recognised as a traditional community in terms of this Act to serve as members of the traditional councils in respect of the allocated functions of traditional councils as set out in section 8. -

(3) *Izinduna* may be accorded the same status as, and may perform similar roles to, those performed by members of the traditional councils. -

(4) For the purposes of this Act, and in accordance with customary law and tradition, *Ubuduna* is exercised by a member of a traditional community on a voluntary basis. -

(5) An *Induna* may be removed from office by the responsible Member of the Executive Council on request of *Inkosi* concerned on the grounds of —

- (a) conviction of an offence with a sentence of imprisonment for more than 12 months without an option of a fine;
- (b) physical incapacity or mental infirmity which, based on acceptable medical evidence, makes it impossible for that *Inkosi* to function as such;
- (c) wrongful appointment or recognition;
- (d) a transgression of a customary rule or principle that warrants removal; or
- (e) misconduct,

provided that the *Induna* concerned must be given an opportunity to respond to the allegations giving rise to grounds for his or her removal before he or she is removed from office.

**Support of traditional structures**

28. The Department may provide assistance —

- (a) to traditional communities;
- (b) to traditional councils; and
- (c) to the institution of traditional leadership as recognized in this Act,

in skills development, administration or any other area in which support is required.

**Iziphakanyiswa**

29.(1) In communities in which the *Inkosi* holds office by virtue of an electoral procedure or appointment as opposed to hereditary suc-

cession, and subject to a decision with respect to their entitlement to such position made by the Commission in terms of sections 25 and 26 of the Traditional Leadership and Governance and Framework Act, 2003, a person who is so elected must hold the office as *Inkosi* for a period of five years and may be re-elected.

(2) For purposes of recognition of *Isiphakanyiswa*, the provisions of section 19 apply with the necessary changes.

(3) The provisions of sections 20, 21, 22, 23, 24 and 25 apply with the necessary changes to *Isiphakanyiswa*.

#### **Ibambabukhosi**

30.(1) *Ibambabukhosi* may only be identified and recognised where —

- (a) a successor to the leadership position concerned has not been identified;
- (b) the successor to the position of *Isilo* or *Inkosi* is a minor;
- (c) *Isilo* or *Inkosi* recognised as contemplated in sections 17 or 19, as the case may be, would be absent from his or her area of jurisdiction for a period of more than six months for —
  - (i) the treatment of illness;
  - (ii) study purposes; or
  - (iii) any other lawful purpose, but excluding circumstances contemplated in section 26(1).

(2) The recognition of *Ibambabukhosi* must be reviewed by the Premier, after consultation with the responsible Member of the Executive Council, at least once every three years.

(3) For purposes of identification and recognition of *Ibambabukhosi*, the provisions of sections 17 and 19 apply with the necessary changes.

(4) *Ibambabukhosi* must carry out the duties of office on behalf of *Isilo* or *Inkosi*, as the case may be, until such time that *Isilo* or *Inkosi* is in a position to assume office.

(5) For purposes of the removal of *Ibambabukhosi*, the provisions of section 21 apply with the necessary changes.

(6) If, within 30 days, *Ibambabukhosi* has not been identified, the Premier, may, after consultation with the Provincial House of Traditional Leaders and the Executive Council, appoint an appropriate person to function in the interim as *Ibambabukhosi* until such time that the Royal Family or *umndeni wenkosi* has identified *Ibambabukhosi*.

### CHAPTER 4 HOUSES OF TRADITIONAL LEADERSHIP

#### **Traditional leadership structures**

31. In addition to traditional councils established and recognised in Chapter 3 and traditional leadership recognised in Chapter 4, the following traditional institutions are recognised for purposes of this Act —

- (a) the Provincial House; and
- (b) the Local Houses.

#### **Establishment of KwaZulu-Natal Provincial House of Traditional Leaders**

32. The KwaZulu-Natal Provincial House of Traditional Leaders is hereby established.

#### **Composition of Provincial House**

33.(1) The Provincial House consists of the following members —

- (a) *Isilo* or his or her nominee; and
- (b) a minimum of three and a maximum of seven members elected from each Local House of Traditional Leaders.

(2) The number of members of the Provincial House to be elected from each Local House must be determined by the responsible Member of the Executive Council having regard to the number of traditional communities recognised in the area of jurisdiction of that Local House.

(3) The Provincial House must meet at least four times a year and thereafter as often as necessary.

(4) The seat of the Provincial House is *Ulundi*, or such other place as the Executive Council of the Province may determine.

(5) The Provincial House of Traditional Leaders must meet within thirty days after the publication in the *Gazette* of a notice convening the Provincial House by the responsible Member of the Executive Council.

(6) The responsible Member of the Executive Council must publish a notice convening the Provincial House after a minimum of fifty traditional communities have been recognised in terms of this Act.

(7) No person may be elected as a member of the Provincial House or attend or participate in its meetings (except as a spectator of the public gallery), until the community which such person purports to lead, is recognised as a Traditional Community in terms of this Act.

(8) The term of office of members of the Provincial House is five years: Provided that the term of office of the first Provincial House established in terms of this Act, commences on the date the responsible Member of the Executive Council determines the number of elected members of the Provincial House in terms of subsection (2) and continues until the next General National Elections called in terms of section 49(2) of the Constitution.

(9) The members contemplated in subsection (8) are eligible for re-election.

(10) The seat of a member of the Provincial House becomes vacant upon —

- (a) his or her death; or
- (b) his or her removal from office.

(11) Members of the Provincial House are subject to the same rules as applicable to members of the Provincial Legislature regarding corruption and declaration of gifts and other acquisitions acquired by them through their office as *Amakhosi*.

(12) The responsible Member of the Executive Council may appoint or second and remunerate a secretary and any other administrative staff required by the Provincial House to conduct its business.

(13) The Provincial House has —

- (a) the roles and functions conferred upon it by this Act; and
- (b) any other roles and functions conferred or imposed upon it by national legislation or prescribed by the responsible Member of the Executive Council.

(14) A Provincial House may establish and elect an executive committee comprising no more than 10 members of that Provincial House.

(15) An executive committee of the Provincial House has the roles and functions conferred or imposed upon it by the Provincial House.

#### **Roles and functions of Provincial House**

34.(1) The Provincial House may advise and make proposals and other recommendations to the Provincial Government, through the office of the responsible Member of the Executive Council, with respect to —

- (a) legislation or matters affecting traditional leaders, traditional councils or communities; and
- (b) legislation and matters pertaining to *Zulu* custom and tradition, or such other matters in respect of which the responsible Member of the Executive Council has invited comment.

(2) The advice, proposals and recommendations made in terms of subsection (1) are of persuasive value and do not preclude the Provincial Legislature from enacting legislation in conflict with such advice, proposals and recommendations from the Provincial House, provided that such legislation is constitutional and advocates the values of open democratic society.

(3) Any pending legislation or draft Bill contemplated in subsection (1) above must be referred to the Provincial House which must convene, if necessary in a special extraordinary sitting to consider and make written representations on such legislation within 30 days to the Provincial Legislature.

(4) In the event that the Provincial House fails to sit to consider the draft Bill or fails to furnish representations within 30 days of the referral, the Bill may be put to the vote in the Provincial Legislature without further notice to the Provincial House.

#### **Meetings of Provincial House**

35.(1) The responsible Member of the Executive Council must, after the election of a new House, by notice in the *Gazette*, convene a meeting of the Provincial House.

(2) At the first meeting of the Provincial House, a Judge of the High Court of the Republic of South Africa must act as Chairperson until such time as the Chairperson and deputy Chairperson of the Provincial House have been elected by members of the House, whereafter the Chairperson of the House must conduct the election of the remaining members of the Executive Committee, which must consist of a minimum of five and a maximum of ten members.

#### **Establishment of Local Houses of traditional leaders**

36.(1) A Local House is hereby established in the areas of district municipalities where there are five or more traditional communities.

(2) In the event that less than five traditional communities exist in the area of any district municipality, the traditional leaders within that district municipality, must choose one from amongst their number to represent traditional communities at the sitting of meetings of such district municipalities.

#### **Composition of Local Houses**

37.(1) Each Local House consists of all the Amakhosi within the district municipality.

(2) A local House may establish and elect an executive committee comprising no more than 7 members of that Local House.

(3) An executive committee of a Local House has the roles and functions conferred or imposed upon it by that Local House.

#### **Meetings of Local Houses**

38.(1) The responsible Member of the Executive Council must, by notice in the *Gazette*, convene the first meetings of Local Houses.

(2) At the first meeting of a Local House a person appointed by the responsible Member of the Executive Council must act as Chairperson until such time as the Chairperson and Deputy Chairperson of that Local House have been elected by the members of that House.

(3) Meetings of Local Houses must be convened by written notice to all the members at least four days prior to the date of the meeting.

#### **Roles and Functions of Local Houses**

39.(1) For purposes of the roles and functions of a Local House, the provisions of section 17(3) of the Traditional Leadership and Governance Framework Act, 2003, apply with the necessary changes.

(2) If the members of a Local House have reason to believe that one of the members of that Local House is neglecting his or her traditional roles or functions, they may counsel that member, provided however that their role is advisory, and they do not have any disciplinary authority over that member.

#### **Referral of legislation to Local Houses**

40.(1) Any legislation regarding the provision of services or the demarcation of boundaries, or land tenure which falls within the competency of a district municipality and will apply to traditional communities must be referred to the Local House before it is passed.

(2) If the Local House objects to such legislation, its comments and recommendations may be referred to the responsible Member of the Executive Council and the Provincial Legislature within 30 days.

CHAPTER 5  
GENERAL PROVISIONS

**General duties**

41.(1) Members of the Provincial and Local Houses of Traditional Leaders, all traditional leaders and all members of every traditional council, collectively and individually, must —

- (a) give effect to the provisions of the Constitution;
- (b) give priority to the basic needs of the communities served by them;
- (c) promote the development of the communities served by them;
- (d) ensure that all members of the communities served by them have access to services;
- (e) perform the roles and exercise the functions to be performed or exercised by them under this Act fairly, without bias, favour or influence, and in the best interests of the communities they serve; and
- (f) ensure that the services provided by them are provided in an equitable and accessible manner, and in a manner which is prudent, economic, efficient and effective.

(2) The Provincial House and Local Houses of Traditional Leaders may make rules and orders in connection with the conduct of their internal business and proceedings.

(3) The *quorum* for the Provincial House and Local Houses of Traditional Leaders is at least one-third of all members of that house in order to constitute a valid meeting of that house, and is at least one-half of all the members of that house when voting on any matter within its power.

(4) All decisions of the Provincial House and Local Houses of Traditional Leaders are taken by the majority of the members present at that meeting.

**Code of Conduct**

42.(1) There is a Provincial Code of Conduct for KwaZulu-Natal as contained in Schedule 1.

(2) The Code of Conduct applies to all members of the Provincial and Local Houses of Traditional Leaders, all traditional leaders and all members of every traditional council.

(3) The Code of Conduct incorporates the National Code of Conduct contained in the Schedule to the Traditional Leadership and Governance Framework Act, 2003.

(4) The responsible Member of the Executive Council may, by notice in the *Gazette* supplement or amend the Code of Conduct, but may not vary, amend or otherwise remove the National Code of Conduct.

(5) The responsible Member of the Executive Council may prescribe processes for dealing with alleged breaches of the Code of Conduct.

**Oath of office**

43. Newly appointed members of traditional councils, the Provincial House and Local Houses of Traditional Leaders assume office only after swearing or affirming faithfulness to the Province and obedience to the Constitution in accordance with Schedule 2 before a person designated in writing by the responsible Member of the Executive Council.

**Regulatory powers**

44.(1) The Premier, after consultation with the responsible Member of the Executive Council, may issue notices in the *Gazette* as contemplated in this Act.

(2) The responsible Member of the Council may, by notice in the *Gazette*, make regulations and issue notices in respect of —

- (a) any matter which is required or permitted by this Act to be prescribed;
- (b) the introduction and implementation of a system of performance management for traditional councils, traditional leaders, the Provincial and Local Houses of Traditional Leaders; and
- (c) any administrative or procedural matter necessary to give effect to the provisions of this Act, including the manner in which all elections contemplated in this Act are to be conducted.

(3) A regulation or notice contemplated in subsections (1) and (2) must be tabled with the Provincial Legislature within 14 days after its publication in the *Gazette* if the Legislature is in session, or within 14 days after the commencement of the next ensuing session.

**Act binds State**

45. This Act binds the State.

**Juristic personality**

46. The following institutions have juristic personality —

- (a) Traditional Councils;
- (b) the Provincial House of Traditional Leaders; and
- (c) Local Houses of Traditional Leaders.

**Assets, liabilities and resources**

47.(1) Institutions contemplated in section 46 may —

- (a) acquire, own, possess, hold, procure by lease, any movable or immovable property;
- (b) acquire rights and incur liabilities in carrying out, performing and executing their roles, powers, functions and duties as contemplated in this Act;
- (c) establish and administer a trust, funds of which must be used as contemplated in this Act, and as contemplated in the Public Finance Management Act, 1999;

- (d) insure with any company or persons against any losses, damages, risks and liabilities;
- (e) sue or be sued in their own name; and
- (f) only alienate, encumber or dispose of any movable or immovable property, with the written authority of the responsible Member of the Executive Council.

(2) Institutions contemplated in section 46, must efficiently manage all their assets and resources.

#### **Delegation of powers, assignments, agency and service delivery agreements**

48.(1)(a) The responsible Member of the Executive Council may delegate any power contemplated in this Act, except the power to make regulations and issue notices, to the Head of Department.

(b) Such delegation does not prevent the exercise of the relevant power by the responsible Member of the Executive Council concerned.

(2) Departments in the Provincial Government, statutory institutions, organs of state and municipalities may —

- (a) delegate or assign any power or function to; or
  - (b) enter into agency or service delivery agreements with,
- the institutions contemplated in section 46.

#### **Dispute resolution**

49.(1) Whenever a dispute concerning customary law or customs arises within a traditional community or between traditional communities or other traditional institutions on a matter arising from the implementation of this Act or otherwise, members of such a community or institution and traditional leaders within the traditional community or traditional institution concerned must seek to resolve the dispute internally and in accordance with customary law and customs.

(2) Any dispute contemplated in subsection (1) that cannot be resolved must be referred to —

- (a) the Provincial House of Traditional Leaders, which must seek to resolve the dispute in accordance with its rules and procedures within 30 days;
- (b) the responsible Member of the Executive Council, in the event that the Provincial House of Traditional Leaders is unable to or has failed to resolve the dispute, who may, subject to the provisions of 21(1)(b) and 25 of the Traditional Leadership and Governance Framework Act, 2003, refer the matter to the Commission for its recommendation within 30 days; and
- (c) the Premier, in the event that the responsible Member of the Executive Council is unable to or has failed to resolve the dispute, who must resolve the dispute within 30 days after consultation with —
  - (i) the responsible Member of the Executive Council;
  - (ii) the parties to the dispute; and
  - (iii) the Provincial House of Traditional Leaders.

#### **Cross-boundary arrangements**

50. The Premier, after consultation with the responsible Member of the Executive Council, may enter into agreements with other provincial governments in respect of matters relating to traditional communities, traditional leaders or traditional institutions in the event that the management of such matters would be better served by a joint approach by the provincial governments concerned.

#### **Offences and penalties**

51.(1) A person is guilty of an offence if that person —

- (a) purports to be a traditional leader in terms of this Act without having been recognised as contemplated in this Act;
- (b) wilfully obstructs the carrying out, performance or execution of any role, power, function or duty vested in, or allocated to, any traditional leader, any traditional council, the Provincial House, any Local House or the Commission as contemplated in this Act or any other law.

(2) A person convicted of an offence contemplated in subsection (1) is liable to a fine or imprisonment not exceeding 12 months, or both such fine and imprisonment.

#### **Transitional arrangements**

52.(1) The responsible Member of the Executive Council must, by notice in the *Gazette*, within one year of the commencement of the Traditional Leadership and Governance Framework Act, 2003, disestablish all regional authorities that were established in terms of applicable legislation before the commencement of that Act.

(2) The notice disestablishing a regional authority must regulate the legal, practical and other consequences of the disestablishment, including —

- (a) the transfer of assets, liabilities and administrative and other records to an appropriate provincial department, a municipality or Local House, as circumstances may require;
- (b) the vacation of office of any office-bearer of such regional authority; and
- (c) the transfer of staff of such regional authority.

(3) All executive and administrative actions performed by the Provincial Government in good faith relating to traditional communities, traditional community members, traditional leadership, traditional leaders, traditional authorities, community authorities, regional authorities or their respective jurisdictional areas, before the coming into operation of this Act, are hereby deemed to have been validly performed —

- (a) as if the required legal basis, including, but not limited to, delegations, assignments, agency agreements, powers of attorney or service delivery agreements, had been in existence at the time of such actions being performed; or
- (b) where the then existing legal basis, including, but not limited to, delegations, assignments, agency agreements, powers of attorney or service delivery agreements, was not fully complied with.

(4) In order to permit the finalisation of the process referred to in section 19, for a period of one year from the commencement of this Act any traditional leader who had been appointed as such in terms of applicable provincial legislation and was still recognised as a traditional leader immediately before the commencement of this Act, is deemed to be recognised as such in terms of this Act, subject to the provisions of this Act, whereafter such recognition falls away.



(5) *Isiphakanyiswa* who held office immediately before the commencement of this Act is deemed to be recognised as such in terms of this Act, and holds office for a period of five years from the commencement of this Act.

(6) In order to provide for the finalisation of an application in terms of section 2, for a period of one year from the commencement of this Act any traditional community that, immediately before the commencement of this Act, had been established and was still recognised as such, is deemed to be a traditional community, subject to the withdrawal of its recognition in accordance with the provisions of section 4, whereafter such recognition falls away.

#### Repeal of laws

53.(1) The repeal of the KwaZulu Act on the Code of Zulu Law, 1985 (Act 16 of 1985) and the Natal Code of Zulu Law, 1987 (Proclamation No. R.151 of 1987) takes effect on a date determined by the responsible Member of the Executive Council by notice in the *Gazette*.

(2) The remaining laws mentioned in the first and second column of Schedule 3 are hereby repealed to the extent set out in the third column of that schedule.

#### Short title

54. This Act is called the KwaZulu-Natal Traditional Leadership and Governance Act, 2005.

### SCHEDULE 1

#### The National Code of Conduct and the Provincial Code of Conduct

(Section 42)

#### PART A: Provincial Code of Conduct

##### General Conduct

1. All traditional leaders and members of the Provincial House of Traditional Leaders, the Local Houses of Traditional Leaders and traditional councils must —

- (a) perform their functions in good faith, honestly and in a transparent manner;
- (b) at all times act in the best interests of the community they serve;
- (c) ensure that the credibility and integrity of traditional leadership or traditional authority is not compromised.

##### Disclosure of interests and personal gain

2.(a) Traditional leaders, members of the Provincial and Local Houses of Traditional Leaders and members of a traditional council —

- (i) must disclose any direct or indirect personal or private business interest that that traditional leader or member, or any spouse, partner or business associate of that traditional leader or member may have which may reasonably be expected to preclude him or her from performing his or her functions under this Act in a fair, unbiased and proper manner or where potential prejudice or conflict of interest may arise, and he or she must recuse himself or herself from the consideration of such matter;
- (ii) may not use the position or privileges derived by him or her under this Act for private gain or to improperly benefit another person; and
- (iii) may not be a party to or a beneficiary under any contract for the provision of goods or services to or work for the Provincial House of Traditional Leaders, a Local House of Traditional Leaders or a traditional council of which he or she is a member without the prior written consent of the Provincial House of Traditional Leaders or the relevant Local House of Traditional Leaders or traditional council.

(b) Any disclosure, determination or consent contemplated in paragraph (a) must be recorded in the minutes of the meeting of the Provincial House of Traditional Leaders or the relevant Local House of Traditional Leaders or traditional council.

#### PART B: The National Code of Conduct

##### General conduct of traditional leader

1. A traditional leader —

- (a) must perform the functions allocated to him or her in good faith, diligently, honestly and in a transparent manner;
- (b) must fulfil his or her role in an efficient manner;
- (c) may not conduct himself or herself in a disgraceful, improper or unbecoming manner;
- (d) must comply with any applicable legislation;
- (e) must act in the best interest of the traditional community or communities he or she serves;
- (f) must promote unity amongst traditional communities;
- (g) may not embark on actions that would create division within or amongst traditional communities;
- (h) must promote nation building;
- (i) may not refuse to provide any service to a person on political or ideological grounds;
- (j) must foster good relations with the organs of state with whom he or she interacts;
- (k) must promote the principles of a democratic and open society; and
- (l) must disclose gifts received.

##### General conduct of traditional council

2. A traditional council must —

- (a) perform the functions allocated to it in good faith, diligently, honestly and in a transparent manner;
- (b) execute its duties in an efficient manner;
- (c) comply with any applicable legislation;
- (d) act in the best interest of the traditional community it serves;
- (e) give effect to the principles governing public administration set out in section 195 of the Constitution; and
- (f) foster good relations with the organs of state with whom it interacts.

**SCHEDULE 2****Oath or solemn affirmation of members of Provincial House of Traditional Leaders, Local Houses of Traditional Leaders and traditional councils**

(Section 43)

I, A.B., swear/ solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the Constitution and all other law of the Republic of South Africa, and I undertake and solemnly promise to hold my office as a member of (insert Provincial House of Traditional Leaders or name of applicable Local House of Traditional Leaders or traditional council) with honour and dignity; impartially and without bias, fear, or favour or influence, and to perform the role and function of my office conscientiously and to the best of my ability.

(In the case of an oath: "So help me God".)

**SCHEDULE 3****Repeal of laws**

(Section 53)

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of repeal</i>
Proclamation No. R. 110 of 1957	Regulations Prescribing the Duties, Powers, Privileges and Conditions of Service for Chiefs and Headmen, 1957	The whole
Act No. 7 of 1974	KwaZulu Tribal Taxation Act, 1974	The whole
Act No. 17 of 1979	KwaZulu Financial Regulations for Tribal and Community Authorities Act, 1979	The whole
Act No. 16 of 1985	KwaZulu Act on the Code of Zulu Law, 1985	The whole
Proclamation No. R. 151 of 1987	Natal Code of Zulu Law, 1987	The whole
Act No. 9 of 1990	KwaZulu Amakhosi and Iziphakanyiswa Act, 1990	The whole
Act No. 6 of 1993	KwaZulu Act on the Payment of Salaries, Allowances and other Privileges to the Ingonyama, 1993	The whole
Act No. 2 of 1994	KwaZulu-Natal Legislative Remuneration Act, 1994	The whole
Act No. 7 of 1994	KwaZulu-Natal Act on the House of Traditional Leaders, 1994	The whole
Act No. 5 of 1995	KwaZulu-Natal Amakhosi and Iziphakanyiswa Amendment Act, 1995	The whole
Provincial Notice No. 243 of 2000	Transitional Measures: Appointment of Municipal Facilitation Committee for DC 29 Area, 2000	The whole

**No. 5, 2006**

16 Januarie 2006

*[Engelse teks deur die Premier geteken]***KWAZULU-NATAL WET OP TRADISIONELE LEIERSKAP EN REGERING, 2005**

(Wet No. 5 van 2005)

Goedgekeur op 2005-12-01

**WET**

Om voorsiening te maak vir die erkenning van tradisionele gemeenskappe; om voorsiening te maak vir die instelling en erkenning van tradisionele rade; om voorsiening te maak vir die erkenning van tradisionele leiers, en vir hulle rol en funksies; om voorsiening te maak vir die erkenning van *Isilo* as die Monarg van die provinsie KwaZulu-Natal; om voorsiening te maak vir die ontslag van 'n tradisionele leier uit die amp; om voorsiening te maak vir Huise van Tradisionele Leiers; om voorsiening te maak vir 'n Gedragskode vir tradisionele leiers; om voorsiening te maak vir die herroeping van sekere wette; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

**AANHEF**

AANGESIEN die provinsie KwaZulu-Natal, in ooreenstemming met die Grondwet en die Raamwerkwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003), die bestaan van tradisionele gemeenskappe in die provinsie erken en daarna streef om —

(a) 'n bevorderlike omgewing vir die ontwikkeling van tradisionele gemeenskappe, tradisionele instellings, gewoontereg en gebruike te erken, beskerm, omskep en te voorsien; en

(b) die instelling en rol van tradisionele leierskap te omskep om in harmonie met die stelsel van demokratiese regering in Suid-Afrika te wees;

EN AANGESIEN die Provinsiale Regering van KwaZulu-Natal begerig is om wetgewing uit te vaardig ter ondersteuning van die beginsels van en pligte aan hom opgelê deur die Raamwerkwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003);

WORD DAAR deur die Wetgewer van die provinsie KwaZulu-Natal soos volg bepaal:—

## INDELING VAN ARTIKELS

*Artikel*

## HOOFSTUK 1

## UITLEG EN TOEPASSING

1. Omskrywings, uitleg en toepassing

## HOOFSTUK 2

## TRADISIONELE GEMEENSAPPE EN TRADISIONELE RADE

2. Erkenning van tradisionele gemeenskappe
3. Tradisionele gemeenskappe en grondwetlike beginsels
4. Toelating van nuwe individue tot bestaande tradisionele gemeenskappe
5. Terugtrekking van erkenning van tradisionele gemeenskappe
6. Instelling en erkenning van tradisionele rade
7. Ampstermyn en vulling van vakatures
8. Funksies van tradisionele rade
9. Regspleging
10. Vennootskap tussen tradisionele rade en munisipaliteite
11. Ondersteuning aan tradisionele rade
12. Personeelvoorsiening aan tradisionele rade
13. Vergaderings van tradisionele rade
14. Notule van vergaderings
15. Reis- en verblyftoelaes vir lede van tradisionele rade

## HOOFSTUK 3

## LEIERSKAPPOSISIES BINNE DIE TRADISIONELE LEIERSKAPINSTELLING

16. Erkenning van tradisionele leierskapposisies
17. Erkenning van *Isilo* as Monarg
18. Rol en pligte van *Isilo* as Monarg
19. Erkenning van 'n *Inkosi*
20. Rol en pligte van *Amakhosi*
21. *Ontslag van tradisionele leier*
22. *Bevoegdheid van Uitvoerende Raad om tradisionele leiers te ontbied*
23. *Ondersoek na wangedrag*
24. *Skorsing van tradisionele leier*
25. *Afwesigheid van tradisionele leier*
26. *Aangewese persoon*
27. *Izinduna*
28. *Ondersteuning van tradisionele strukture*
29. *Iziphakanyiswa*
30. *Ibambabukhosi*

## HOOFSTUK 4

## HUISE VAN TRADISIONELE LEIERS

31. Tradisionele leierskapstrukture
32. Instelling van KwaZulu-Natal Provinsiale Huis van Tradisionele Leiers
33. Samestelling en ampstermyn van die Provinsiale Huis
34. Rol en funksies van Provinsiale Huis
35. Vergaderings van Provinsiale Huis
36. Instelling van Plaaslike Huise van Tradisionele Leiers
37. Samestelling van Plaaslike Huise

- 38. Vergaderings van Plaaslike Huise
- 39. Rol en funksies van Plaaslike Huise
- 40. Verwysing van wetgewing

HOOFSTUK 5  
ALGEMENE BEPALINGS

- 41. Algemene pligte
- 42. Gedragskode
- 43. Ampseed
- 44. Regulerende bevoegdhede
- 45. Wet bind Staat
- 46. Regspersoonlikheid
- 47. Bates, laste en hulpbronne
- 48. Delegasie van bevoegdhede, opdragte, agentskaps- en diensleweringsooreenkomste
- 49. Geskilhantering
- 50. Oorgrensreëlins
- 51. Misdrywe en strawwe
- 52. Oorgangsreëlins
- 53. Herroeping van wette
- 54. Kort titel

BYLAES

- Bylae 1: Gedragskode
- Bylae 2: Ampseed
- Bylae 3: Herroeping van wette

HOOFSTUK 1  
OMSKRYWINGS, UITLEG EN TOEPASSING

**Omskrywings, uitleg en toepassing**

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken —

“**Departement**” die departement van die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir tradisionele sake;

“**departementshoof**” die mees senior amptenaar van die departement van die Provinsiale Regering van KwaZulu-Natal verantwoordelik vir tradisionele sake;

“**distriksmunisipaliteit**” ’n munisipaliteit wat oor munisipale uitvoerende en wetgewende magte beskik in ’n gebied wat meer as een plaaslike munisipaliteit insluit soos bedoel in artikel 5 van die KwaZulu-Natal Wet op die Vastelling van Soorte Munisipaliteite, 2000 (Wet No. 7 van 2000), en wat in artikel 155(1)(c) van die Grondwet as ’n kategorie C munisipaliteit beskryf word;

“**Gedragskode**” die gedragskode soos vervat in bylae 1 van hierdie Wet;

“**gewoonte-instelling of struktuur**” daardie instellings of strukture wat ingevolge gewoontereg ingestel is;

“**Grondwet**” die Grondwet van die Republiek van Suid-Afrika, 1996;

“**hierdie Wet**” ook die regulasies en kennisgewings kragtens hierdie Wet uitgevaardig;

“**Ibambabukhosi**” ’n regent of ’n waarnemende tradisionele leier aangestel ingevolge artikel 30;

“**Imbizo**” ’n beraadslagende vergadering van die lede van ’n tradisionele gemeenskap byeengeroep in ooreenstemming met gebruik;

“**Induna**” ’n tradisionele leier wat onder die gesag is van, of gesag uitoefen in die gebied van jurisdiksie van, ’n *Inkosi* in ooreenstemming met gewoontereg, en as sodanige erken ingevolge artikel 27 van hierdie Wet, en “*Izinduna*” en “*Ubuduna*” het ’n ooreenstemmende betekenis;

“**Inkosi**” ’n senior tradisionele leier soos omskryf in artikel 1 van die Raamwerkwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003), en as sodanig erken ingevolge artikel 19 van hierdie Wet, en “*Amakhosi*” het ’n ooreenstemmende betekenis;

“**Isilo**” die Monarg van die provinsie KwaZulu-Natal soos erken in artikel 17 of “koning” soos omskryf in artikel 1 van die Raamwerkwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003);

“**Isiphakanyiswa**” ’n *Inkosi* wat die amp beklee ingevolge ’n gebruikelike kiesprosedure of aanstelling, en “*Iziphakanyiswa*” het ’n ooreenstemmende betekenis;

“**Koerant**” die amptelike *Provinsiale Koerant* van die provinsie;

“**Koninklike Familie**” die kern gewoonte-instelling of —struktuur bestaande uit naaste bloedverwante van die regerende familie binne ’n tradisionele gemeenskap wat ingevolge gebruik aangewys is met inbegrip van, waar van toepassing, ander naverwante familieleden van die regerende familie;

“**Kommissie**” die Kommissie vir Tradisionele Leierskapseskille en —eise ingestel by artikel 22 van die Raamwerkwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003);

“**munisipale raad**” ’n munisipaliteit soos vermeld in hoofstuk 7 van die Grondwet;

“**Plaaslike Huis**” ’n Plaaslike Huis van Tradisionele Leiers vermeld in artikel 36;

“**Premier**” die Premier van die provinsie KwaZulu-Natal;

“**President**” die President van die Republiek van Suid-Afrika;

“**Provinsiale Huis**” die Provinsiale Huis van Tradisionele Leiers vermeld in artikel 32;

“**Provinsiale Regering**” die regering van die provinsie KwaZulu-Natal;

“**Provinsiale Wetgewer**” die Wetgewer van die provinsie KwaZulu-Natal;

“**provinsie**” die provinsie KwaZulu-Natal bedoel in artikel 103 van die Grondwet;

“**regulasies**” regulasies kragtens artikel 44 uitgevaardig;

“**tradisionele gemeenskap**” ’n tradisionele gemeenskap wat as sodanige erken word ingevolge artikel 2;

“**tradisionele leier**” enige persoon wat ingevolge gewoontereg van die betrokke tradisionele gemeenskap ’n tradisionele leierskapsposisie beklee as *Isilo*, *Inkosi* of *Induna* en ingevolge hierdie Wet of die Raamwerkwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003) erken word, en “**tradisionele leierskap**” het ’n ooreenstemmende betekenis;

“**tradisionele raad**” ’n tradisionele raad ingestel ingevolge artikel 6;

“**Uitvoerende Raad**” die Uitvoerende Raad van die provinsie soos bedoel in artikel 125(2) en 132 van die Grondwet;

“**umndeni wenkosi**” die naaste bloedverwante van ’n *Inkosi* wat ingevolge gebruik of tradisie geïdentifiseer is met inbegrip van, waar van toepassing, ander persone wat op grond van tradisionele rolle as sodanig geïdentifiseer is;

“**verantwoordelike Lid van die Uitvoerende Raad**” die Lid van die Uitvoerende Raad verantwoordelik vir tradisionele sake in die provinsie;

“**voorgeskryf**” by regulasie voorgeskryf ingevolge hierdie Wet, en “**voorskryf**” het ’n ooreenstemmende betekenis;

(2) Niks wat in hierdie Wet vervat is, moet uitgelê word as sou dit lede van ’n tradisionele gemeenskap belet om ’n tradisionele leier aan te spreek volgens die tradisionele titel wat volgens gebruik aan hom of haar toegeken is, maar sodanige tradisionele titel doen nie afbreuk nie of voeg nie enigiets by tot die status, rol en funksies van ’n tradisionele leier soos voorgeskryf in hierdie Wet nie.

(3) Tradisionele leiers kan die verskillende vlakke van senioriteit onder hulleself in ooreenstemming met gebruike erken, en geen van die omskrywings wat in subartikel (1) vervat is, moet uitgelê word as sou dit iets toevoeg of afbreuk doen aan sodanige senioriteit nie.

## HOOFSTUK 2

### TRADISIONELE GEMEENSKAPPE EN TRADISIONELE RADE

#### Erkenning van tradisionele gemeenskappe

2.(1) ’n Gemeenskap kan as ’n tradisionele gemeenskap erken word indien dit —

- (a) onderhewig is aan die stelsel van tradisionele leierskap ingevolge daardie gemeenskap se gebruike; en
- (b) ’n stelsel van gewoontereg handhaaf.

(2) ’n Tradisionele gemeenskap kan skriftelik by die Premier aansoek doen om as ’n tradisionele gemeenskap erken te word.

(3) ’n Aansoek vermeld in subartikel (2) moet ’n beskrywing van die gemeenskap bevat met inbegrip van die volgende besonderhede —

- (a) ’n aanduiding van die grootte van die gemeenskap;
- (b) die algemeen aanvaarde naam van die gemeenskap;
- (c) die naam van die *Inkosi* onder wie se gesag die gemeenskap val;
- (d) die name van die persone wat die gemeenskap as hulle leiers beskou en hulle betiteling ingevolge toepaslike gebruike; en
- (e) ’n beskrywing van die gebied waarin die gemeenskap gewoonlik woon.

(4) By ontvangs van die aansoek vermeld in subartikel (2) moet die Premier —

- (a) die aansoek na die verantwoordelike Lid van die Uitvoerende Raad verwys vir kommentaar of advies; en
- (b) die aansoek na die Provinsiale Huis verwys.

(5) Die Premier moet, binne drie maande na ontvangs van die aansoek vermeld in subartikel (2) —

- (a) oorleg daaroor pleeg met *Isilo*, die Provinsiale Huis, die betrokke gemeenskap en, indien toepaslik, die *Inkosi* onder wie se gesag daardie gemeenskap sal val;
- (b) ’n besluit neem of die betrokke gemeenskap as tradisionele gemeenskap erken gaan word en sodanige besluit moet by kennisgewing in die *Koerant* gepubliseer word; en
- (c) die gemeenskap in kennis stel van die besluit vermeld in paragraaf (b).

(6) Die Premier moet ingevolge hierdie artikel ’n sertifikaat van erkenning aan die gemeenskap uitreik wat as ’n tradisionele gemeenskap erken is.

**Tradisionele gemeenskappe en grondwetlike beginsels**

3. 'n Tradisionele gemeenskap moet gewoontereg en gebruike verander en aanpas om te voldoen aan die beginsels wat in die Grondwet verskans is, veral deur —

- (a) onregverdigde diskriminasie te voorkom;
- (b) gelykheid te bevorder; en
- (c) in 'n toenemende mate daarna te strewen om geslagsverteenvoering en —opvolging ten opsigte van tradisionele leierskap te bevorder.

**Toelating van nuwe individue tot bestaande tradisionele gemeenskappe**

4. *Inkosi*-in-rade kan enige nuwe individu tot 'n tradisionele gemeenskap toelaat ooreenkomstig die reëls en gebruike van daardie gemeenskap en behoudens die bepalings van die Grondwet.

**Terugtrekking van erkenning van tradisionele gemeenskappe**

5.(1) Die Premier moet die terugtrekking van die erkenning van 'n gemeenskap as 'n tradisionele gemeenskap oorweeg waar —

- (a) die betrokke tradisionele gemeenskap die Premier skriftelik versoek om sy erkenning as tradisionele gemeenskap terug te trek;
- (b) die Premier deur die betrokke tradisionele gemeenskap of tradisionele gemeenskappe versoek word om die posisie van daardie tradisionele gemeenskap of tradisionele gemeenskappe te hersien wat voor 1994 ingevolge die toepaslike wetgewing verdeel of saamgesmelt; of
- (c) twee of meer erkende tradisionele gemeenskappe die Premier versoek dat hulle in 'n enkele tradisionele gemeenskap verenig word.

(2) Die erkenning van 'n gemeenskap as 'n tradisionele gemeenskap word teruggetrek waar —

- (a) die Premier gehoor gee aan die versoek van 'n gemeenskap om die erkenning van die gemeenskap as 'n tradisionele gemeenskap terug te trek;
- (b) 'n hersiening beoog in subartikel (1)(b) aantoon dat —
  - (i) 'n bestaande tradisionele gemeenskap wat voor 1994 ingevolge toepaslike wetgewing weens samesmelting tot stand gekom het, verdeel moet word; of
  - (ii) twee of meer tradisionele gemeenskappe wat voor 1994 ingevolge toepaslike wetgewing weens verdeling tot stand gekom het, verenig moet word; of
  - (iii) die Premier gehoor gee aan die versoek van twee of meer tradisionele gemeenskappe om verenig te word in een tradisionele gemeenskap.

(3) Die Premier moet met *Isilo*, die Provinsiale Huis en enige gemeenskap wat geraak word, oorleg pleeg voordat daar uitvoering aan die terugtrekking van die erkenning van 'n tradisionele gemeenskap gegee word.

(4) Die terugtrekking van die erkenning van 'n tradisionele gemeenskap geskied by wyse van 'n kennisgewing in die *Koerant*.

(5) Die kennisgewing vermeld in subartikel (4) moet ook voorsiening maak vir die terugtrekking van die erkenning van die betrokke tradisionele raad op dieselfde tydstip wanneer die erkenning van sy tradisionele gemeenskap teruggetrek word.

**Instelling en erkenning van tradisionele rade**

6.(1) 'n Tradisionele gemeenskap wat as sodanig erken word ingevolge artikel 2 moet, binne drie maande nadat die gemeenskap dienooreenkomstig in kennis gestel is ingevolge artikel 2(5)(c), en behoudens artikel 3 van die Raamwet op Tradisionele Leierskap en Regering, 2003 (Wet No. 41 van 2003), 'n tradisionele raad instel soos in hierdie artikel voorgeskryf.

(2) Die getal lede van 'n tradisionele raad —

- (a) moet deur die Premier vasgestel word in ooreenstemming met 'n formule wat deur die verantwoordelike Lid van die Uitvoerende Raad vasgestel word by kennisgewing in die *Koerant*, welke formule die bevolking van die betrokke tradisionele gemeenskap in aanmerking moet neem;
- (b) mag nie meer as 30 wees nie; en
- (c) moet uit minstens een derde vroue bestaan.

(3) Die volgende beginsels is van toepassing op die instelling van 'n tradisionele raad —

- (a) deur die vereiste om aan die bepalings van subartikel (2) te voldoen in aanmerking te neem, moet *Inkosi* van daardie gemeenskap 60 persent van die ledetal van die tradisionele raad kies uit die tradisionele leiers en lede van die tradisionele gemeenskap ingevolge daardie gemeenskap se gebruike;
- (b) die oorblywende lede van die tradisionele raad, wat 40 persent daarvan moet uitmaak, moet op 'n demokratiese wyse uit ander lede van daardie tradisionele gemeenskap verkies word by 'n *Imbizo* wat spesiaal vir daardie doel deur *Inkosi* byeengeroep is;
- (c) *Inkosi* moet die name van die lede van die tradisionele raad wat ingevolge subartikel (3)(a) deur hom of haar gekies is, bekend maak voordat die oorblywende lede van die tradisionele raad verkies word;
- (d) die lede van die tradisionele raad beklee die amp op 'n vrywillige basis vir 'n tydperk van vyf jaar.

(4) Die betrokke *Inkosi* moet die name van die lede van die tradisionele raad en die besonderhede van die instelling van daardie tradisionele raad skriftelik aan die Premier voorlê binne twee weke na die instelling van daardie raad ingevolge subartikel (1).

(5) Waar 'n onvoldoende getal vroue beskikbaar is om in die tradisionele raad te dien soos beoog in subartikel (3)(a) en (b), moet die betrokke *Inkosi* bewys aan die Premier voorlê dat 'n onvoldoende getal vroue beskikbaar is om aldus te dien.

(6) By ontvangs van die inligting vermeld in subartikel (4) of (5), moet die Premier dit oorweeg of die instelling van die betrokke tradisionele raad gedoen is in ooreenstemming met hierdie artikel en artikel 3 van die Raamwet op Tradisionele Leierskap en Regering, 2003.

(7) Waar subartikel (5) nie van toepassing is nie, en die Premier oortuig is dat daar aan hierdie artikel en artikel 3 van die Raamwet op Tradisionele Leierskap en Regering, 2003 voldoen is, moet die Premier by kennisgewing in die *Koerant* die tradisionele raad erken en sy gebied van jurisdiksie vasstel.

(8) Waar subartikel (5) van toepassing is, kan die Premier, indien hy na oorlegpleging met die betrokke tradisionele gemeenskap oortuig is dat daar aangetoon is dat 'n onvoldoende getal vroue beskikbaar is om in die tradisionele raad te dien, 'n laer drempel vasstel as wat in artikel 3(2)(b) van die Raamwet op Tradisionele Leierskap en Regering vir daardie tradisionele raad vereis word.

(9) Nadat die Premier 'n laer drempel ingevolge subartikel (8) vasgestel het, en die Premier oortuig is dat daar aan die ander voorskrifte van hierdie artikel en artikel 3 van die Raamwet op Tradisionele Leierskap en Regering, 2003 voldoen is, moet die Premier by kennisgewing in die *Koerant* die tradisionele raad erken en sy gebied van jurisdiksie vasstel.

(10) Die Premier moet —

- (a) die laer drempel in subartikel (8) vermeld elke vyf jaar hersien; en
- (b) by kennisgewing in die *Koerant*, die laer drempel hervasstel of bevestig.

(11) Daar moet aan subartikel (10)(b) voldoen word totdat sodanige laer drempel ter syde gestel is.

(12) Daar moet met enige geskil rakende die grense van die gebied van jurisdiksie van tradisionele rade gehandel word ingevolge artikel 25 van die Raamwet op Tradisionele Leierskap en Regering, 2003: Met dien verstande dat sou 'n geskil ontstaan na die ontbinding van die Kommissie, moet sodanige geskil hanteer word in ooreenstemming met die meganismes wat die Premier mag vasstel.

#### Ampstermyn en vulling van vakatures

7.(1) 'n Vakature ontstaan in die geledere van 'n tradisionele raad indien —

- (a) 'n lid skriftelik bedank;
- (b) die ampstermyn van die lede verstryk;
- (c) 'n lid te sterwe kom; of
- (d) 'n lid vir enige ander rede nie langer 'n lid is nie.

(2) 'n Vakature in die geledere van —

- (a) die gekose lede van 'n tradisionele raad moet binne ses weke nadat die vakature ontstaan het deur die betrokke *Inkosi* gevul word deur die kies van 'n lid van die tradisionele gemeenskap om die vakature te vul; of
- (b) die verkose lede van die tradisionele raad moet binne drie weke nadat die vakature ontstaan het, gevul word deur lede van die tradisionele gemeenskap ingevolge subartikel (3)(b) te verkies om die vakature te vul.

#### Funksies van tradisionele rade

8.(1) Dit is die funksie van tradisionele rade om —

- (a) die sake van die tradisionele gemeenskap in ooreenstemming met gebruike en tradisie te administreer;
- (b) tradisionele leiers by te staan, te ondersteun en raad te gee met betrekking tot die uitoefening van hul funksies;
- (c) met munisipaliteite saam te werk ten opsigte van die identifisering van gemeenskapsbehoefes;
- (d) die betrokkenheid van die tradisionele gemeenskap ten opsigte van die ontwikkeling of wysiging van die geïntegreerde ontwikkelingsplan van 'n munisipaliteit in wie se gebiede daardie gemeenskap woon, te fasiliteer;
- (e) na oorlegpleging met die betrokke Plaaslike Huis en die Provinsiale Huis, gepaste ingrypings by die regering aan te beveel wat sal bydra tot ontwikkeling en dienslewering binne die gebied van jurisdiksie van die tradisionele raad;
- (f) deel te neem aan die ontwikkeling van beleid en wetgewing op plaaslike vlak;
- (g) deel te neem aan die ontwikkelingsprogramme van munisipaliteite en van die provinsiale en nasionale regeringsfere;
- (h) die ideale van saamwerkende regering, geïntegreerde ontwikkelingsbeplanning, volhoubare ontwikkeling en dienslewering te bevorder;
- (i) inheemse kennisstelsels vir volhoubare ontwikkeling en rampbestuur te bevorder;
- (j) enige betrokke munisipaliteit te waarsku oor enige gevaar of ramp wat die gebied van jurisdiksie van die betrokke tradisionele raad bedreig, of die welstand van mense wat in sodanige gebied van jurisdiksie woon, en om 'n bydrae tot rampbestuur in die algemeen te lewer;
- (k) inligting met ander tradisionele rade uit te ruil en met hul saam te werk;
- (l) die funksies uit te oefen wat deur gewoontereg, gebruike en wetlike bepalinge verleen word en met die Grondwet bestaanbaar is;
- (m) die waardes van die tradisionele gemeenskap in stand te hou;
- (n) sodanige praktyke wat verdeeldheid op grond van stamverband saai, te verwerp en te verbied;
- (o) vrede en stabiliteit tussen lede van tradisionele gemeenskappe te bevorder; en
- (p) maatskaplike saamhorigheid in die tradisionele gemeenskap te bevorder.

(2) 'n Tradisionele raad moet —

- (a) behoorlike rekords hou;
- (b) sy finansiële state deur die Ouditeur-Generaal laat ouditeer;
- (c) die ontvangs van geskenke openbaar;
- (d) 'n jaarvergadering met sy tradisionele gemeenskap hou om rekenskap te gee van die werksaamhede en finansies van die tradisionele raad;
- (e) getrou bly aan die Gedragskode.

#### Regspiegling

9. Die tradisionele raad moet sodanige bevoegdhede uitoefen en pligte en funksies met betrekking tot regspiegling verrig soos deur die reg aan hom verleen of opgedra.

#### Vennootskap tussen tradisionele rade en munisipaliteite

10.(1) Die Provinsiale Regering moet vennootskappe tussen munisipaliteite en tradisionele rade deur middel van wetgewende en ander maatreëls bevorder.

(2) Die vennootskap beoog in subartikel (1) moet gebaseer word op die beginsel van wedersydse respek en erkenning van die status en rol van die partye.

(3) Sonder om afbreuk te doen aan die algemeenheid van subartikel (1), kan 'n tradisionele raad 'n voorstel by die munisipale raad indien om 'n verordening aan te neem wat die tradisionele raad nodig ag met betrekking tot enige aangeleentheid wat sy gebied van jurisdiksie raak.

(4) Die voorstel beoog in subartikel (3), kan vergesel gaan van 'n konsep van die voorgestelde verordening en moet skriftelik gemotiveer word.

(5) Die munisipale raad moet die voorgestelde verordening by sy eersvolgende vergadering oorweeg en kan die kommentaar van sy munisipale bestuurder versoek.

(6) In die geval waar die munisipale raad nie die voorgestelde verordening aanvaar nie, moet die munisipale raad die tradisionele raad skriftelik van sy besluit in kennis stel en redes vir sy besluit aanvoer.

#### Ondersteuning aan tradisionele rade

11.(1) Die Provinsiale Regering of die betrokke munisipale raad kan sodanige wetgewende of ander maatreëls aanvaar as wat nodig is om die vermoë van tradisionele rade te steun en te versterk om hulle funksies te verrig.

(2) Die Provinsiale Regering of die betrokke munisipale raad kan, binne die omvang van die middele tot die regering se beskikking, finansiële bystand aan tradisionele rade verleen om die tradisionele rade in staat te stel om hul funksies te vervul.

(3) Die steun in hierdie artikel beoog, kan vervoerbystand insluit waar dit uitvoerbaar is met inagnome van begrotingsbeperkings.

#### Personeelvoorsiening aan tradisionele rade

12.(1) Die Provinsiale Regering of die betrokke munisipale raad kan, in ooreenstemming met toepaslike wetgewing en binne die beperkinge van beskikbare finansiële en menslike hulpbronne, voorsiening maak vir personeelvoorsiening ten opsigte van tradisionele rade met inagnome van die omvang van die gebied van jurisdiksie van tradisionele rade en die behoeftes van sy inwoners.

(2) Die personeel wat aan tradisionele rade afgestaan word, moet aan 'n persoon rapporteer wat deur die betrokke *Inkosi*, in wie se gebied van jurisdiksie die betrokke tradisionele raad val, aangewys word.

(3) Enige onaanvaarbare gedrag of optrede van personeel wat aan die tradisionele raad afgestaan word, moet —

(a) in die geval van personeel wat deur die Provinsiale Regering afgestaan word, aan 'n persoon gerapporteer word wat deur die verantwoordelike Lid van die Uitvoerende Raad aangewys is; of

(b) in die geval van personeel wat deur die munisipale raad afgestaan word, aan die munisipale bestuurder van die munisipaliteit wat vir sodanige persoon verantwoordelik is, gerapporteer word,

wat moet besluit of enige dissiplinêre stappe teen sodanige personeel gedoen moet word in ooreenstemming met die toepaslike reg.

#### Vergaderings van tradisionele rade

13.(1) *Inkosi* moet, binne 21 dae na die instelling van 'n tradisionele raad ingevolge artikel 6, die eerste vergadering van die tradisionele raad byeenroep.

(2)(a) Vergaderings van tradisionele rade vind plaas onder die voorsitterskap van die *Inkosi* binne wie se jurisdiksie die tradisionele raad val, tensy die *Inkosi* nie by 'n vergadering teenwoordig is nie, in welke geval daardie vergadering onder die voorsitterskap van die ondervoorsitter sal plaasvind.

(b) Die ondervoorsitter van 'n tradisionele raad word verkies deur die lede van daardie tradisionele raad by sy eerste vergadering.

(c) Indien die voorsitter en ondervoorsitter beide afwesig is van 'n vergadering, sal daardie vergadering plaasvind onder die voorsitterskap van 'n waarnemende voorsitter wat deur en uit die geleedere van die teenwoordige lede verkies sal word.

(3) Elke tradisionele raad moet elke maand 'n gewone vergadering hou op 'n dag en tyd wat deur die voorsitter bepaal word.

(4) 'n Skriftelike kennisgewing van die vergadering moet aan alle lede van die tradisionele raad gestuur word minstens vier dae voor die datum van die vergadering.

(5) Die prosedure wat by enige vergadering van die tradisionele raad gevolg word, moet in ooreenstemming wees met gewoontereg en gebruike.

(6) 'n Spesiale vergadering kan deur die voorsitter of twee lede van die tradisionele raad belê word om 'n spesifieke punt op die agenda te bespreek wat nie tot 'n geskeduleerde vergadering kan oorstaan nie.

#### Notule van vergaderings

14.(1) Elke tradisionele raad moet notule hou van elkeen van sy vergaderings waarin die volgende genotuleer moet word —

(a) die datum, tyd en plek van die vergadering;

(b) die name van die lede teenwoordig;

(c) 'n opsomming van elke besluit wat by die vergadering geneem is; en

(d) indien 'n lid dit versoek, die feit dat hy of sy teen enige besluit gestem het.

(2) 'n Afskrif van die notule moet binne vyftien dae na enige vergadering aan 'n amptenaar in die departement gestuur word wat deur die verantwoordelike Lid van die Uitvoerende Raad vir hierdie doel aangewys word.

#### Reis- en verblyftoelaes vir lede van tradisionele rade

15.(1) Die Premier, in oorleg met die lid van die Uitvoerende Raad verantwoordelik vir finansies, kan die reis- en verblyftoelaes betaalbaar aan lede van tradisionele rade vasstel.



HOOFSTUK 4  
LEIERSKAPPOSISIES BINNE DIE TRADISIONELE LEIERSKAPINSTELLING

**Erkenning van tradisionele leierskapposities**

16. Die volgende tradisionele leierskapposities word erken:

- (a) *Isilo*;
- (b) *Amakhosi*; en
- (c) *Izinduna*.

**Erkenning van *Isilo* as Monarg**

17.(1) *Isilo* word hierby as die Monarg van die provinsie erken.

(2) *Isilo* moet behoudens hierdie Wet ingevolge gewoontereg en gebruike aangewys word.

(3) Wanneer die posisie van *Isilo* gevul moet word, moet die volgende proses gevolg word —

- (a) die Koninklike Familie moet binne 'n redelike tyd nadat die behoefte om die pos van *Isilo* te vul, ontstaan het en met inagneming van toepaslike gewoontereg —
  - (i) 'n persoon identifiseer wat ingevolge gewoontereg kwalifiseer om die posisie van *Isilo* te aanvaar nadat in aanmerking geneem is of die gronde wat in artikel 10(a), (b) of (d) van die Raamwet op Tradisionele Leierskap en Regering, 2003 vermeld word op daardie persoon van toepassing is;
  - (ii) die redes vir die identifisering van daardie persoon as *Isilo* aan die Premier verskaf; en
  - (iii) die Premier moet die President dienooreenkomstig inlig.
- (b) die persoon wat geïdentifiseer word soos bedoel in paragraaf (a)(i), moet as *Isilo* erken word soos bepaal in artikel 9(1)(b) en (9)(2) van die Raamwet op Tradisionele Leierskap en Regering, 2003.

(4) Die Premier moet die Nasionale en Provinsiale Huise van Tradisionele Leiers van die erkenning of aanstelling van *Isilo* in kennis stel.

(5) Die Premier kan 'n spesiale plegtigheid reël om *Isilo* die geleentheid te gee om sy trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal te bevestig asook sy voorneme om die Grondwet en reg te gehoorsaam, respekteer en te handhaaf.

**Rol en pligte van *Isilo* as Monarg**

18. Dit is die plig van *Isilo* om —

- (a) die Grondwet en die reg te handhaaf;
- (b) nasionale en provinsiale eenheid te bevorder;
- (c) funksies van *Isilo* in ooreenstemming met gewoontereg uit te oefen;
- (d) een keer per jaar met ander Suid-Afrikaanse tradisionele leiers te vergader;
- (e) sodanige seremoniële pligte te vervul soos wat deur die provinsiale regering vereis word, met inbegrip van die opening van die Provinsiale Wetgewer;
- (f) gemeenskappe wat as tradisionele gemeenskappe erken word, te ondersteun en te ontwikkel, en om op te tree by die tradisionele inhuldiging van alle *Amakhosi* bykomend tot ander gebruikelike verantwoordelikhede;
- (g) met die Uitvoerende Raad saam te werk te omsigtig van —
  - (i) toekenning van eerbewyse en onderskeidings;
  - (ii) ontmoeting buitelandse hooggeplaastes;
  - (iii) verteenwoordiging van KwaZulu-Natal op kulturele en maatskaplike terrein beide binne die Republiek van Suid-Afrika en oorsee; en
  - (iv) die toespraak van sessies of vergaderings van provinsiale interregeringsliggame of strukture.

(2) *Isilo* mag enige persoon of persone volgens gebruike en tradisies aanstel om spesifieke funksies en rituele te vervul wat voortspruit uit sy pligte soos vervat in subartikel (1).

**Erkenning van 'n *Inkosi***

19.(1) Wanneer die posisie van 'n *Inkosi* gevul moet word, moet die volgende proses gevolg word:

- (a) *Umnjeni wenkosi* moet, binne 'n redelike tyd nadat die behoefte ontstaan het om die amp van 'n *Inkosi* te vul, en met inagneming van toepaslike gewoontereg en artikel 3 —
  - (i) 'n persoon identifiseer wat ingevolge gewoontereg kwalifiseer om die amp van *Inkosi* te aanvaar nadat in aanmerking geneem is of die gronde vermeld in artikel 21(1)(a), (b) of (d) op daardie persoon van toepassing is;
  - (ii) redes aan die Premier verskaf vir die identifisering van daardie persoon as 'n *Inkosi*; en
  - (iii) die Premier moet, behoudens subartikel (3) en artikel 3, 'n persoon wat aldus ingevolge subartikel (2)(a)(i) geïdentifiseer is, as 'n *Inkosi* erken.

(2) Die erkenning van 'n persoon as 'n *Inkosi* ingevolge subartikel (1)(a)(iii) moet gedoen word by wyse van —

- (a) 'n kennisgewing in die *Koerant* ter erkenning van die persoon wat as 'n *Inkosi* geïdentifiseer is; en
- (b) die uitreiking van 'n sertifikaat van erkenning aan die geïdentifiseerde persoon.

(3) Die Provinsiale Huis moet deur die Premier in kennis gestel word van die erkenning of aanstelling van 'n *Inkosi*.

(4) Waar daar bewyse of 'n bewering is dat die identifikasie van 'n persoon om as 'n *Inkosi* aangestel te word nie in ooreenstemming met gewoontereg, gebruike of prosesse gedoen is nie, of strydig met artikel 3 van hierdie Wet gedoen is, kan die Premier —

- (a) die aangeleentheid na die Provinsiale Huis vir sy kommentaar verwys; of
- (b) weier om 'n sertifikaat van erkenning uit te reik; en
- (c) moet die Premier die aangeleentheid na die *umnjeni wenkosi* terugverwys vir herooringing en besluit indien die sertifikaat van erkenning geweier is.

(5) Waar die aangeleentheid wat na die *umnjeni wenkosi* vir herooringing en besluit ingevolge subartikel (4) terugverwys is, herooringing en opgelos is, moet die Premier die persoon erken wat deur die *umnjeni wenkosi* geïdentifiseer is indien die Premier oortuig is dat die herooringing en besluit deur die *umnjeni wenkosi* ooreenkomstig gewoontereg geskied het.

(6) Die erkenning van 'n *Inkosi* as die senior tradisionele leier van 'n erkende tradisionele gemeenskap tree in werking op 'n datum wat in 'n kennisgewing gespesifiseer word, wat deur die Premier in die *Koerant* gepubliseer word.

(7) Binne drie weke na die datum van die erkenning of die datum van publikasie van die kennisgewing vermeld in subartikel (6), watter een ookal die later datum is, moet 'n *Inkosi* wat aldus erken word die Premier skriftelik voorsien van die name van die *Induna* of *Izinduna* van daardie *Inkosi*, tesame met die datum en name van al die lede teenwoordig by die tradisionele raad waarby sodanige *Induna* of *Izinduna* eenparig deur die tradisionele raad goedgekeur is.

(8)(a) 'n *Inkosi* word geag af te tree met sy of haar skriftelike versoek om aftrede aan die verantwoordelike Lid van die Uitvoerende Raad.

(b) By aftrede word 'n *Inkosi* nie langer geag om ingevolge hierdie Wet erken en aangestel te wees nie.

#### Rol en funksies van Amakhosi

##### 20.(1) Amakhosi moet —

- (a) die Grondwet handhaaf en verseker dat die lede van sy of haar tradisionele gemeenskap die regte het wat daarin vasgelê is, met inbegrip van die reg tot vryheid, politieke bedrywighede en vryheid van assosiasie;
- (b) demokrasie en provinsiale eenheid bevorder en nasionale en provinsiale wetgewing handhaaf;
- (c) gebruikelike funksies verrig wat nie onbestaanbaar met nasionale en provinsiale wetgewing is nie, en bestaanbaar is met 'n oop en demokratiese samelewing; en
- (d) kennis en begrip van die Zoeloe-kultuur, -geskiedenis en -tradisie bewaar en bevorder.

##### (2) Elke *Inkosi* moet —

- (a) minstens elke twee maande 'n vergadering van sy of haar tradisionele raad belê en daaraan rapporteer;
- (b) elke drie maande 'n vergadering van sy of haar tradisionele gemeenskap belê en daaraan rapporteer;
- (c) spesiale oorlegplegende vergaderings van die Provinsiale Huis bywoon wanneer sodanige vergaderings belê word;
- (d) deelneem aan munisipale rade indien geïdentifiseer om dit te doen ingevolge artikel 81 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998); en
- (e) enige funksies uitoefen wat vir *Amakhosi* deur die Lid van die Uitvoerende Raad voorgeskryf word;
- (f) wet en orde handhaaf en sonder versuim enige aangeleentheid of besorgdheid aan die verantwoordelike Lid van die Uitvoerende Raad rapporteer, met inbegrip van enige toestand van onrus of ongelukkigheid;
- (g) die beskerming van lewe, persone en eiendom en die veiligheid van reisigers in sy gebied verseker, en onverwyld aan die betrokke departement van die Provinsiale Regering of munisipaliteit, of enige ander toepaslike owerheid die volgende rapporteer —
  - (i) die dood van enige persoon weens geweld of enige ander onnatuurlike oorsake;
  - (ii) die uitbraak van enige aansteeklike of besmetlike siekte;
  - (iii) enige wangebruik van staatseiendom;
  - (iv) enige onreëlmatige ontvangs of gebruik van staatsfondse; en
  - (v) die pleeg van 'n misdryf waarvoor hy of sy nie jurisdiksie het om daarmee te handel nie.
- (h) verseker dat die lede van sy of haar tradisionele gemeenskap die uitoefening van hulle grondwetlike regte van vrye politieke bedrywighede en keuses, vryheid van uitdrukking, vryheid van samekoms en demonstrasie en vryheid van godsdien, oortuiging en mening vreedsaam en ongewapen kan uitoefen.
- (i) die vereistes van enige nuwe wet onder die aandag van die inwoners van sy of haar gebied bring;
- (j) die nakoming van alle wette en bevels en instruksies van 'n bevoegde owerheid verseker;
- (k) wreedheid teenoor diere voorkom;
- (l) enige lewende hawe, wanneer die reg dit vereis, aanhou of skut wat onwettig gewei of afgedwaal het, of wederegtelik of onder verdagte omstandighede in sy of haar gebied losgelaat is en dit aan die bevoegde owerheid rapporteer;
- (m) in die algemeen probeer om die belange van sy of haar tradisionele gemeenskap en die streek te bevorder, en daadwerklike maatreëls te ondersteun en in werking te stel vir die vooruitgang van die gemeenskap.

(3) 'n *Inkosi* mag nie lid word of deelneem aan enige bedrywighede of op enige wyse die doelwitte bevorder van enige organisasie wie se oogmerke en bedrywighede die volgende insluit nie —

- (a) ongrondwetlike omverwerping van die regering;
- (b) propaganda ten gunste van oorlog;
- (c) aanhitsing van geweld of ongehoorsaamheid aan enige wet; of
- (d) voorspraak vir haat gebaseer op ras, etnisiteit, geslag of godsdien en wat aanhitsing behels om leed te berokken.

(4) Indien 'n *Inkosi* in gebreke bly om aan nasionale en provinsiale wetgewing te voldoen, of weier om enige plig na te kom wat deur hierdie Wet van hom of haar vereis word, moet hy of sy aan 'n ondersoek bedoel in artikel 23 onderwerp word.

#### Ontslag van tradisionele leier

##### 21.(1) 'n Tradisionele leier kan uit die amp ontslaan word op grond van —

- (a) skuldigebevinding aan 'n misdryf met 'n vonnis van gevangenisstraf vir langer as 12 maande sonder die keuse van 'n boete;
- (b) liggaamlike onvermoë of geestesgebrek gegrond op aanvaarbare mediese getuienis wat dit onmoontlik vir daardie *Inkosi* maak om as sodanig te funksioneer;
- (c) onreëlmatige aanstelling of erkenning;
- (d) 'n oortreding van gewoonteregsreël of beginsel wat ontslag regverdig;
- (e) oortreding van die Gedragskode; of
- (f) wangedrag soos bedoel in artikel 23.

(2) Wanneer enige van die gronde vermeld in subartikel (1) (a), (b), (c), (d) en (e) onder die *umndeni wenkosi* se aandag kom en die betrokke *umndeni wenkosi* besluit om die tradisionele leier te ontslaan, moet die *umndeni wenkosi* binne redelike tyd en deur middel van die toepaslike gebruikelike strukture —

- (a) die Premier verwittig van die besonderhede van die tradisionele leier wat uit die amp ontslaan moet word; en
- (b) redes vir sodanige ontslag aanvoer.

- (3) 'n Tradisionele leier kan slegs uit die amp ontslaan word weens die gronde uiteengesit in subartikel 1(a), (b), of (c) hierbo nadat hy of sy die geleentheid gebied is om verhoë te rig in reaksie op die gronde waarop sy of haar ontslag oorweeg is en daardie verhoë deur die geskikte gesag oorweeg is.
- (4) 'n Tradisionele leier kan slegs uit die amp ontslaan word weens die gronde uiteengesit in subartikel 1(d), (e) of (f) hierbo na 'n ondersoek ingevolge artikel 23.
- (5) Waar daar besluit word om 'n tradisionele leier ingevolge artikel 23 te ontslaan, moet die Premier —
- die sertifikaat van erkenning terugtrek met ingang van die datum van ontslag;
  - 'n kennisgewing met die besonderhede van die ontslane tradisionele leier in die *Koerant* publiseer; en
  - die *umndeni wenkosi*, die ontslane tradisionele leier en die Provinsiale Huis van sodanige ontslag in kennis stel.
- (6) Waar 'n tradisionele leier uit die amp ontslaan word, kan 'n opvolger ingevolge hierdie Wet en in ooreenstemming met heersende gewoontereg en gebruike aangestel word.

#### Bevoegdheid van Uitvoerende Raad om tradisionele leiers te ontbied

- 22.(1) Die Uitvoerende Raad kan wanneer hy dit ookal nodig ag enige tradisionele leier skriftelik ontbied om voor hom te verskyn ten einde ondersoek in te stel na —
- enige aangeleentheid wat die betrokke tradisionele gemeenskap kan benadeel of vermoedelik kan benadeel;
  - enige aangeleentheid van belang of kommer wat sodanige tradisionele leier regstreeks of onregstreeks beïnvloed in sy hoedanigheid as sodanig, of wat die Provinsiale Regering in die uitoefening van sy funksies beïnvloed; of
  - enige ander aangeleentheid wat die administrasie van die Provinsiale Regering in die gebied van die tradisionele leier nadelig beïnvloed.

#### Ondersoek na wangedrag

- 23.(1) Wanneer daar 'n rede is om te glo dat 'n tradisionele leier skuldig is aan wangedrag deurdat hy of sy —
- in gebreke bly of weier om aan die bepalings van hierdie Wet of enige ander wet ingevolge sy of haar pligte te voldoen;
  - die Gedragskode verbreek;
  - 'n wettige opdrag wat deur 'n bevoegde gesag aan hom of haar gegee is, verontagsaam, minag of doelbewus in gebreke bly om dit uit te voer;
  - hom- of haarself op 'n skandelijke, onbehoorlike of onbetaamlike wyse gedra;
  - opstandigheid openbaar;
  - sterk drank of verdowende middels in oormaat gebruik;
  - sy of haar bevoegdhede misbruik of deur afdreiging, of deur die gebruik van dwang of eïemagtige middele, enige heffing, fooi, vergoeding of geskenk ontvang;
  - probeer om enige persoon te straf of enige persoon straf sonder die nodige gesag om dit te doen;
  - nalatig of traag is om sy of haar pligte na te kom; of
  - skuldig bevind word aan 'n misdryf,
- moet die verantwoordelike Lid van die Uitvoerende Raad die tradisionele leier skriftelik aankla van sodanige misdryf.
- (2) Die aanklag vermeld in subartikel (1) moet —
- die besonderhede uiteensit van die beweringe wat teen die tradisionele leier gemaak word;
  - die tradisionele leier gelas om binne 21 dae skriftelik op die beweringe te reageer, welke reaksie 'n erkenning of ontkenning van die beweringe moet wees en wat vergesel kan gaan van 'n skriftelike verduideliking van die omstandighede rakende die aangeleentheid.
- (3) Indien die tradisionele leier die aanklag ontken of in gebreke bly om daarop te reageer binne die gespesifiseerde tyd, moet die verantwoordelike Lid van die Uitvoerende Raad 'n voorsittende beampte aanstel om die beweringe te ondersoek.
- (4) Die voorsittende beampte wat ingevolge subartikel (3) hierbo aangestel word, moet 'n ondersoek na die beweringe instel, en moet aan die tradisionele leier wat aangekla word minstens 14 dae kennis gee van die datum, tyd en plek van die ondersoek.
- (5) Die tradisionele leier, wat aangekla word, het tydens die ondersoek die reg om sy of haar saak te stel, hetsy persoonlik of deur 'n regsvertegenwoordiger, en kan enige persoon wat as getuie deur die ondersoek se voorsittende beampte geroep word in kruisondervraging neem.
- (6) Die voorsittende beampte moet rekord hou van die ondersoek se verrigtinge.
- (7) Die voorsittende beampte kan enige persoon dagvaar om die ondersoek by te woon en getuie aan te bied met betrekking tot die aanklag teen die tradisionele leier.
- (8) Enige persoon wat ingevolge subartikel (7) gedagvaar word en in gebreke bly om die ondersoek by te woon op die tyd, datum en plek in die dagvaardiging gespesifiseer, is skuldig aan 'n misdryf en kan by skuldigbevinding gevonnissen word tot 'n boete van hoogstens R10 000 of gevangenisstraf vir 'n tydperk van hoogstens ses maande.
- (9) Die versuim van die aangeklaagde tradisionele leier om die ondersoek sonder 'n geldige rede by te woon, hetsy persoonlik of deur 'n regsvertegenwoordiger, maak die verrigtinge teen hom of haar nie ongeldig nie.
- (10) Na afhandeling van die ondersoek moet die voorsittende beampte sy of haar bevindinge, die rekord van die verrigtinge, en enige waarnemings of aanbevelings wat hy of sy wil doen en (indien van toepassing) enige aanbevole strafbepaling aan die Uitvoerende Raad voorlê.
- (11) Die Uitvoerende Raad kan na oorweging van 'n bevinding ten opsigte van wangedrag, enige kommentaar en aanbevelings van die voorsittende beampte, die rekord van die verrigtinge, tesame met enige verhoë deur die betrokke tradisionele leier, aan daardie tradisionele leier een of meer van die volgende strafbepalings oplê —
- 'n formele skriftelike waarskuwing;
  - 'n skorsingsbevel sonder besoldiging vir 'n tydperk van hoogstens drie maande;
  - 'n boete wat nie 'n bedrag gelyk aan drie maande se besoldiging te bowe gaan nie en wat verhaal kan word van besoldiging

wat aan hom of haar betaalbaar is ingevolge die Wet op die Besoldiging van Openbare Ampsbekleders, 1998 (Wet No. 20 van 1998) in sodanige paaiemente as wat die Uitvoerende Raad mag vasstel en wat in die Provinsiale Inkomstefonds gestort moet word; of

(d) 'n kennisgewing wat die erkenning van daardie tradisionele leier terugtrek.

(12) Enige strafbepaling soos bedoel in subartikel (11) wat deur die Uitvoerende Raad opgelê word, moet by kennisgewing in die *Koerant* gepubliseer word.

(13) Die bevinding van die voorsittende beampte en die strafbepaling wat deur die Uitvoerende Raad opgelê word, is finaal.

#### Skorsing van tradisionele leier

24.(1) Die verantwoordelike Lid van die Uitvoerende Raad kan, na oorlegpleging met die Premier, enige tradisionele leier wat van wangedrag verdink word uit die amp skors hangende die finalisering van die verrigtinge wat ingevolge artikel 22 en 23 van hierdie Wet ingestel word.

(2) Enige tradisionele leier wat ingevolge hierdie artikel geskors word, is nie geregtig op enige besoldiging vir die tydperk van sy of haar skorsing nie: Met dien verstande dat die verantwoordelike Lid van die Uitvoerende Raad vir goeie en voldoende redes, en na vertoë deur die gemelde tradisionele leier, die betaling kan gelas van die hele of gedeelte van die besoldiging verskuldig aan daardie tradisionele leier tydens sy of haar skorsing.

(3) Die verantwoordelike Lid van die Uitvoerende Raad of die Uitvoerende Raad kan, na oorlegpleging met die Premier, die skorsing van die tradisionele leier ophef.

(4) *Ibambabukhosi* kan aangestel word in ooreenstemming met die bepalings van hierdie Wet om namens enige geskorste tradisionele leier te handel waar die verantwoordelike Lid van die Uitvoerende Raad dit nodig ag.

#### Afwesigheid van tradisionele leier

25. 'n Tradisionele leier mag nie vir 'n tydperk van langer as 30 dae uit sy of haar tradisionele gemeenskap afwesig wees nie sonder die toestemming van die verantwoordelike Lid van die Uitvoerende Raad of die amptenaar in die departement wat deur die Lid van die Uitvoerende Raad aangewys is, en moet reëlins tref vir die behoorlike nakoming van sy of haar pligte tydens enige afwesigheid.

#### Aangewese persoon

26.(1) 'n *Inkosi* kan, na oorlegpleging met *umndeni wenkosi*, 'n aangewese persoon aanstel om in sy of haar plek waar te neem wanneer daardie *Inkosi* —

- (a) 'n voltydse lid van 'n munisipale raad word;
- (b) verkies word as 'n lid van die Provinsiale Wetgewer;
- (c) verkies word as 'n lid van die Nasionale Vergadering;
- (d) aangestel word as 'n permanente afgevaardigde na die Nasionale Raad van Provinsies; of
- (e) verkies word, of aangestel word, in 'n voltydse amp in enige huis van tradisionele leiers.

(2) Waar 'n aangewese persoon aangestel word om in die plek van 'n *Inkosi* ingevolge hierdie artikel op te tree, moet die *Inkosi* die Premier dienoreenkomstig in kennis stel, en moet die Premier —

- (a) die Provinsiale Huis van sodanige erkenning in kennis stel;
- (b) daarna die aangewese persoon wat aldus aangestel is binne 'n redelike tydperk by kennisgewing in die *Koerant* erken; en
- (c) binne 'n tydperk van dertig dae na die datum van publikasie van die kennisgewing waarin die aangewese persoon erken word, 'n sertifikaat van erkenning aan die persoon uitreik wat ingevolge subartikel (1) aangewys is.

(3) Die erkenning bedoel in subartikel (2) verval aan die einde van die lidmaatskap, aanstelling of verkiesing bedoel in subartikel (1).

(4) Die aangewese persoon kan uit die amp ontslaan word op dieselfde gronde en deur dieselfde prosedure te volg as wat op 'n *Inkosi* van toepassing is.

(5) Die aangewese persoon kan dieselfde funksies uitoefen wat aan die *Inkosi* gekoppel is namens wie hy of sy optree.

#### Izinduna

27.(1) *Izinduna* kan die gebruikelike funksies as verteenwoordigers van, en assistente vir, *Inkosi* uitoefen.

(2) *Izinduna* kan binne 'n gemeenskap aangewys word wat as 'n tradisionele gemeenskap ingevolge hierdie Wet erken word om as lede van die tradisionele rade te dien met betrekking tot die toegewese funksies van tradisionele rade soos in artikel 8 uiteengesit.

(3) *Izinduna* kan dieselfde status geniet, en 'n soortgelyke rol vervul as wat deur lede van die tradisionele rade vervul word.

(4) Vir die doeleindes van hierdie Wet, en in ooreenstemming met gewoontereg en tradisie, word *Ubuduna* deur 'n lid van 'n tradisionele gemeenskap op 'n vrywillige grondslag uitgeoefen.

(5) 'n *Induna* kan deur die verantwoordelike Lid van die Uitvoerende Raad op versoek van die betrokke *Inkosi* uit die amp ontslaan word op grond van —

- (a) skuldigbevinding aan 'n misdryf met 'n vonnis van gevangenisstraf vir langer as 12 maande sonder die keuse van 'n boete;
- (b) liggaamlike onvermoë of geestesgebrek, gegrond op aanvaarbare mediese getuienis, wat dit onmoontlik vir daardie *Inkosi* maak om as sodanig te funksioneer;
- (c) onregmatige aanstelling of erkenning; of
- (d) wangedrag.

#### Ondersteuning van tradisionele strukture

28. Die Departement kan ondersteuning verskaf —

- (a) aan tradisionele gemeenskape;
- (b) tradisionele rade; en
- (c) die instelling van tradisionele leierskap soos deur hierdie Wet erken.

**Iziphakanyiswa**

29.(1) In gemeenskappe waar 'n *Inkosi* die amp beklee vanweë 'n verkiesingsprosedure of aanstelling in teenstelling met erfopvolging, en behoudens 'n besluit ten opsigte van hulle aanspraak op sodanige amp deur die Kommissie geneem ingevolge artikels 25 en 26 van die Raamwerkwet op Tradisionele Leierskap en Regering, 2003, sal 'n persoon wat aldus verkies word die amp van *Inkosi* vir 'n tydperk van vyf jaar beklee en herkiesbaar wees.

(2) Vir die doeleindes van *Isiphakanyiswa*, geld die bepalings van artikel 19 met die nodige veranderings.

(3) Die bepalings van artikels 20, 21, 22, 23, 24 en 25 geld met die nodige veranderings vir *Isiphakanyiswa*.

**Ibambabukhosi**

30.(1) *Ibambabukhosi* kan slegs geïdentifiseer of erken word waar —

- (a) 'n opvolger vir die betrokke leierskapsposisie nie geïdentifiseer is nie;
- (b) die opvolger vir die posisie van *Isilo* of *Inkosi* minderjarig is;
- (c) *Isilo* of *Inkosi* erken soos bedoel in artikel 17 of 19, na gelang van die geval, afwesig gaan wees uit sy gebied van jurisdiksie vir 'n tydperk van ses maande of langer weens —
  - (i) die behandeling van 'n siekte;
  - (ii) studiedoeleindes; of
  - (iii) enige wettige doel, met uitsluiting van omstandighede bedoel in artikel 26(1).

(2) Die erkenning van *Ibambabukhosi* moet minstens een keer elke drie jaar deur die Premier hersien word na oorlegpleging met die Lid van die Uitvoerende Raad.

(3) Vir doeleindes van identifikasie en erkenning van *Ibambabukhosi*, geld die bepalings van artikel 17 en 19 met die nodige veranderings.

(4) *Ibambabukhosi* moet die ampspligte namens *Isilo* of *Inkosi* vervul, na gelang van die geval, totdat *Isilo* of *Inkosi* in 'n posisie is om die amp te aanvaar.

(5) Vir doeleindes van die ontslag van *Ibambabukhosi*, geld die bepalings van artikel 21 met die nodige veranderings.

(6) Indien *Ibambabukhosi* nie binne 30 dae geïdentifiseer word nie, kan die Premier, na oorlegpleging met die Provinsiale Huis en die Uitvoerende Raad, 'n geskikte persoon aanstel om tussentyds as *Ibambabukhosi* op te tree totdat die Koninklike Familie of *umndeni wenkosi* 'n *Ibambabukhosi* geïdentifiseer het.

HOOFSTUK 4  
HUISE VAN TRADISIONELE LEIERSKAP

**Tradisionele leierskapstrukture**

31. Bykomend tot tradisionele rade ingestel en erken in hoofstuk 3 en tradisionele leierskap erken in hoofstuk 4, word die volgende tradisionele instellings vir die doeleindes van hierdie Wet erken —

- (a) die Provinsiale Huis; en
- (b) die Plaaslike Huis.

**Instelling van die KwaZulu-Natal Provinsiale Huis van Tradisionele Leiers**

32. Die KwaZulu-Natal Provinsiale Huis van Tradisionele Leiers word hierby ingestel.

**Samestelling van Provinsiale Huis**

33.(1) Die Provinsiale Huis bestaan uit die volgende lede —

- (a) *Isilo* of sy of haar benoemde; en
- (b) 'n Minimum van drie en 'n maksimum van sewe lede verkies uit elke Plaaslike Huis.

(2) Die getal lede wat uit elke Plaaslike Huis verkies moet word, moet deur die verantwoordelike Lid van die Uitvoerende Raad vasgestel word, met in agneming van, die getal tradisionele gemeenskappe wat in die gebied van jurisdiksie van daardie Plaaslike Huis erken word.

(3) Die Provinsiale Huis moet minstens vier keer per jaar vergader en daarna so dikwels as wat nodig is.

(4) Die setel van die Provinsiale Huis is Ulundi, of sodanige ander plek wat die Uitvoerende Raad van die provinsie mag bepaal.

(5) Die Provinsiale Huis moet binne dertig dae na die publikasie van 'n kennisgewing in die *Koerant* waarin die Huis deur die verantwoordelike Lid van die Uitvoerende Raad byeengeroep is, vergader.

(6) Die verantwoordelike Lid van die Uitvoerende Raad moet 'n kennisgewing publiseer waarin die Provinsiale Huis byeengeroep word nadat 'n minimum van vyftig tradisionele gemeenskappe erkenning ingevolge hierdie Wet ontvang het.

(7) Geen persoon is daarop geregtig om as 'n lid van die Provinsiale Huis verkies te word nie of sy vergaderings by te woon of daaraan deel te neem nie (buiten as 'n toeskouer in die openbare gallery) totdat die gemeenskap wat hulle voorgedien om te lei as 'n tradisionele gemeenskap ingevolge hierdie Wet erken word nie.

(8) Die ampstermyn van lede van die Provinsiale Huis is vyf jaar. Met dien verstande dat die ampstermyn van die eerste Provinsiale Huis ingevolge hierdie Wet ingestel 'n aanvang neem op die datum wat die verantwoordelike Lid van die Uitvoerende Raad die getal verkose lede van die Provinsiale Huis ingevolge subartikel (2) bepaal en duur tot die volgende algemene nasionale verkiesing uitgeroep ingevolge artikel 49(2) van die Grondwet.

(9) Die lede bedoel in subartikel (8) is herkiesbaar.

(10) Die setel van 'n lid van die Provinsiale Huis word vakant by —

- (a) sy of haar afsterwe; of

(b) sy of haar ontslag uit die amp.

(11) Lede van die Provinsiale Huis is onderworpe aan dieselfde reëls wat op lede van die Provinsiale Wetgewer van toepassing is met betrekking tot korrupsie en verklaring van geskenke en ander verkrygings wat deur hulle verkry is weens hulle amp as *Amakhosi*.

(12) Die verantwoordelike Lid van die Uitvoerende Raad kan 'n sekretaris en ander administratiewe personeel aanstel of afstaan en vergoed wat deur die Provinsiale Huis vereis word om sy werksaamhede te verrig.

(13) Die Provinsiale Huis het —

(a) die rol en funksies wat deur hierdie Wet aan hom verleen word; en

(b) enige ander rol en funksies aan hom verleen of opgelê deur nasionale wetgewing of deur die verantwoordelike Lid van die Uitvoerende Raad voorgeskryf.

(14) 'n Provinsiale Huis mag 'n uitvoerende komitee tot stand bring en verkies wat uit hoogstens 10 lede van sodanige Provinsiale Huis bestaan.

(15) Werksaamhede en funksies van 'n uitvoerende komitee van die Provinsiale Huis word aan dit toegeken en opgelê deur die Provinsiale Huis.

#### **Rol en funksies van Provinsiale Huis**

34.(1) Die Provinsiale Huis kan deur die kantoor van die verantwoordelike Lid van die Uitvoerende Raad die Provinsiale Regering van raad te bedien en voorstelle en ander aanbevelings daaraan doen met betrekking tot —

(a) wetgewing of aangeleenthede wat tradisionele leiers, rade en gemeenskappe raak; en

(b) wetgewing en aangeleenthede met betrekking tot Zoeloe-gebruike en -tradisie, of sodanige ander sake ten opsigte waarvan die Lid van die Uitvoerende Raad kommentaar versoek het.

(2) Die advies, voorstelle en aanbevelings wat ingevolge subartikel (1) geskied, het ooreedende waarde en verhinder nie die Provinsiale Wetgewer om wetgewing te verorden in stryd met sodanige advies, voorstelle en aanbevelings van die Provinsiale Huis nie, met dien verstande dat sodanige wetgewing grondwetlik moet wees en die waardes van 'n oop demokratiese samelewing verkondig.

(3) Enige hangende wet of konsepwetsontwerp in subartikel (1) hierbo bedoel, moet na die Provinsiale Huis verwys word wat moet vergader, indien nodig by wyse van 'n spesiale buitengewone sitting, om sodanige wetgewing binne dertig dae te oorweeg en skriftelike verhoë oor sodanige wetgewing by die Provinsiale Wetgewer in te dien.

(4) In die geval waar die Provinsiale Huis in gebreke bly om 'n sitting te hou om die wetgewing wat na hom verwys is, te oorweeg, of in gebreke bly om binne dertig dae na die verwysing verhoë te rig, kan die wetgewing in die Provinsiale Wetgewer tot stemming gebring word sonder enige verdere kennisgewing aan die Provinsiale Huis.

#### **Vergaderings van Provinsiale Huis**

35.(1) Die verantwoordelike Lid van die Uitvoerende Raad moet na die verkiesing van 'n nuwe Huis by kennisgewing in die *Koerant* 'n vergadering van die Provinsiale Huis byeenroep.

(2) By die eerste vergadering van die Provinsiale Huis moet 'n Regter van die Hooggeregshof as voorsitter optree totdat 'n voorsitter en ondervoorsitter deur lede van die Provinsiale Huis verkies word, waarna die voorsitter van die Huis 'n verkiesing moet hou vir die verdere lede van die Uitvoerende Komitee, wat uit 'n minimum van vyf en maksimum van tien lede moet bestaan.

#### **Instelling van Plaaslike Huisse van Tradisionele leiers**

36.(1) 'n Plaaslike Huis word hierby ingestel in die gebied van 'n distriksmunisipaliteit waar daar vyf of meer tradisionele gemeenskappe is.

(2) In die geval waar daar minder as vyf tradisionele gemeenskappe in die gebied van enige distriksmunisipaliteit is, moet die tradisionele leiers in daardie distriksmunisipaliteit een uit hulle geledere kies om tradisionele gemeenskappe by die sittings van sodanige distriksmunisipaliteite se vergaderings te verteenwoordig.

#### **Samestelling van Plaaslike Huisse**

37.(1) Elke Plaaslike Huis bestaan uit al die *Amakosi* in die distriksmunisipaliteit.

(2) 'n Plaaslike Huis mag 'n uitvoerende komitee in die lewe roep en verkies wat uit nie meer as 7 lede van sodanige Plaaslike Huis bestaan nie.

(3) 'n Uitvoerende komitee van 'n Plaaslike Huis vervul die rol en funksies wat deur sodanige Plaaslike Huis aan hulle toegeken of voorgeskryf word.

#### **Vergaderings van Plaaslike Huisse**

38.(1) Die verantwoordelike Lid van die Uitvoerende Raad moet by kennisgewing in die *Koerant* die eerste vergadering van die Plaaslike Huisse byeenroep.

(2) By die eerste vergadering van 'n Plaaslike Huis moet 'n persoon wat deur die verantwoordelike Lid van die Uitvoerende Raad aangewys word as voorsitter optree totdat 'n voorsitter en ondervoorsitter deur die lede van daardie Huis verkies word.

(3) Vergaderings van Plaaslike Huisse moet deur middel van skriftelike kennisgewing aan al die lede belê word minstens vier dae voor die datum van die vergadering.

#### **Rol en funksies van Plaaslike Huisse**

39.(1) Vir die doeleindes van die rol en funksies van 'n Plaaslike Huis, geld die bepalings van artikel 17(3) van die Raamwetwet op Tradisionele Leierskap en Regering, 2003 met die nodige veranderings.

(2) Indien die lede van 'n Plaaslike Huis rede het om te glo dat een van die lede van sodanige Plaaslike Huis sy of haar tradisionele rol

funksies versaa, mag hulle met daardie lid beraadslaag, mits hul rol egter raadgevend is, en hulle nie enige dissiplinêre gesag oor sodanige lid het nie.

#### Verwysing van wetgewing na Plaaslike Huisse

40.(1) Enige wetgewing met betrekking tot die voorsiening van dienste of die afbakening van grense of grondverkryging wat binne die bevoegdheid van die distriksmunisipaliteit val en wat op die tradisionele gemeenskappe van toepassing is, moet na die Plaaslike Huis verwys word voordat dit aanvaar word.

(2) Indien die Plaaslike Huis beswaar teen sodanige wetgewing aanteken, kan sy kommentaar en aanbevelings binne 30 dae na die verantwoordelike Lid van die Uitvoerende Raad en die Provinsiale Wetgewer verwys word.

### HOOFTUK 5 ALGEMENE BEPALINGS

#### Algemene pligte

41.(1) Lede van die Provinsiale Huis en Plaaslike Huisse, alle tradisionele leiers en alle lede van elke tradisionele raad, gesamentlik en individueel, moet —

- (a) uitvoering gee aan die bepalings van die Grondwet;
- (b) voorkeur gee aan die basiese behoeftes van die gemeenskappe wat deur hulle gedien word;
- (c) die ontwikkeling van die gemeenskappe wat deur hulle gedien word, bevorder;
- (d) verseker dat alle lede van die gemeenskap wat deur hulle gedien word, toegang tot dienste het;
- (e) die rol en funksies wat deur hulle ingevolge hierdie Wet vervul of uitgeoefen moet word, op 'n regverdige wyse, sonder vooroordeel, begunstiging of beïnvloeding en in beste belang van die gemeenskappe wat hulle dien, vervul en uitoefen; en
- (f) verseker dat die dienste wat deur hulle voorsien word op 'n billike en toeganklike wyse voorsien word, en op 'n wyse wat weloorwoë, ekonomies en doeltreffend is.

(2) Die Provinsiale Huis en Plaaslike Huisse kan reëls en orders maak met betrekking tot die bestuur van hulle interne werksaamhede en verrigtinge.

(3) Die kworum vir die Provinsiale Huis en Plaaslike Huisse is minstens een derde van alle lede van daardie huis ten einde 'n geldige vergadering van daardie huis te verseker, en minstens die helfte van alle lede van daardie huis wanneer oor enige aangeleentheid binne sy bevoegdheid gestem word.

(4) Alle besluite van die Provinsiale en Plaaslike Huisse word geneem deur die meerderheid van die lede teenwoordig by die vergadering.

#### Gedragskode

42.(1) Daar is 'n Provinsiale Gedragskode vir KwaZulu-Natal soos vervat in bylae 1.

(2) Die Gedragskode is van toepassing op alle lede van die Provinsiale en Plaaslike Huisse, alle tradisionele leiers en alle lede van elke tradisionele raad.

(3) Die Gedragskode sal die Nasionale Gedragskode, vervat in die bylae by die Raamwetwet op Tradisionele Leierskap en Regering, 2003, inkorporeer.

(4) Die verantwoordelike Lid van die Uitvoerende Raad kan die Provinsiale Gedragskode by kennisgewing in die *Koerant* aanvul of wysig, maar mag nie die Nasionale Gedragskode verander, wysig of andersins verwyder nie.

(5) Die verantwoordelike Lid van die Uitvoerende Raad kan prosesse vir beweerde verbreking van die Gedragskode voorskryf.

#### Ampseed

43. Nuut verkose lede van tradisionele rade, die Provinsiale Huis en Plaaslike Huisse aanvaar die amp slegs nadat 'n eed of plegtige verklaring van trou aan die provinsie en gehoorsaamheid aan die Grondwet afgelê is in ooreenstemming met bylae 2 voor 'n persoon wat skriftelik deur die verantwoordelike Lid van die Uitvoerende Raad aangewys word.

#### Regulerende bevoegdhede

44.(1) Die Premier kan, na oorlegpleging met die verantwoordelike Lid van die Uitvoerende Raad, kennisgewings soos bedoel in hierdie Wet in die *Koerant* uitreik.

(2) Die verantwoordelike Lid van die Uitvoerende Raad kan, by kennisgewing in die *Koerant*, regulasies uitvaardig en kennisgewings uitreik ten opsigte van —

- (a) enige aangeleentheid wat deur hierdie Wet vereis of toegelaat word om voorgeskryf te word;
- (b) die bekendstelling en implementering van 'n prestasiebestuurstelsel vir tradisionele rade, tradisionele leiers, die Provinsiale en Plaaslike Huisse; en
- (c) enige administratiewe of prosedure-aangeleentheid wat nodig is om uitvoering te gee aan die bepalings van hierdie Wet, met inbegrip van die wyse waarop verkiesings bedoel in hierdie Wet gehou moet word.

(3) Enige regulasie of kennisgewing bedoel in subartikel (1) en (2) moet aan die Provinsiale Wetgewer voorgelê word binne veertien dae na die publikasie daarvan in die *Koerant* indien die Wetgewer in sitting is, of binne veertien dae na die aanvang van die volgende sitting.

#### Wet bind Staat

45. Hierdie Wet bind die Staat.

#### Regspersoonlikheid

46. Die volgende instellings beskik oor regs persoonlikheid —

- (a) Tradisionele Rade;
- (a) die Provinsiale Huis; en
- (c) Plaaslike Huisse.

**Bates, laste en hulpbronne**

47.(1) Instellings bedoel in artikel 46 kan —

- (a) enige roerende of onroerende eiendom aanskaf, besit, hou, huur, vervreem, beswaar of verhandel;
- (b) regte verkry en aanspreeklikhede opdoen in die nakoming, vervulling en uitvoering van hulle rol, bevoegdhede, funksies en pligte soos bedoel in hierdie Wet;
- (c) kan 'n trust instel en administreer waarvan die fondse gebruik moet word soos in hierdie Wet en die Wet op Openbare Finansiële Bestuur, 1999 bedoel;
- (d) versekering by enige maatskappy of persone uitneem teen enige verliese, skade, risiko's en aanspreeklikhede;
- (e) in sy eie naam dagvaar of gedagvaar word; en
- (f) kan alleenlik enige roerende of onroerende eiendom vervreem, beswaar of daarvoor beskik met die skriftelike magtiging van die verantwoordelike Lid van die Uitvoerende Raad.

(2) Instellings bedoel in artikel 46 moet al hulle bates en eiendomme doeltreffend bestuur.

**Delegasie van bevoegdhede, opdragte, agentskaps- en diensleweringsooreenkomste**

48.(1)(a) Die verantwoordelike Lid van die Uitvoerende Raad kan enige bevoegdheid bedoel in hierdie Wet, buiten die bevoegdheid om regulasies uit te vaardig en kennisgewings uit te reik, aan die departementshoof delegeer.

(b) Sodanige delegasie verhoed nie die uitoefening van die betrokke bevoegdheid deur die betrokke verantwoordelike Lid van die Uitvoerende Raad nie.

(2) Departemente van die Provinsiale Regering, statutêre instellings, staatsorgane en munisipaliteite kan —

- (a) enige bevoegdheid of funksie delegeer of oordra aan; of
- (b) agentskaps- of diensleweringsooreenkomste sluit met, die instellings bedoel in artikel 46.

**Geskilhantering**

49.(1) Wanneer 'n geskil aangaande gewoontereg of gebruike binne 'n tradisionele gemeenskap of tussen tradisionele gemeenskappe of ander tradisionele instellings ontstaan oor 'n aangeleentheid wat uit die implementering van hierdie Wet of andersins voortspruit, moet die betrokke lede van sodanige gemeenskap of instelling en tradisionele leiers in die tradisionele gemeenskap of tradisionele instelling probeer om die geskil in eie kring by te lê in ooreenstemming met gewoontereg en gebruike.

(2) Enige geskil bedoel in subartikel (1) wat nie bygelê kan word nie moet verwys word na —

- (a) die Provinsiale Huis wat moet probeer om die geskil binne dertig dae by te lê in ooreenstemming met sy reëls en prosedures;
- (b) die verantwoordelike Lid van die Uitvoerende Raad, in die geval waar die Provinsiale Huis nie in staat is of in gebreke bly om die geskil by te lê, wat behoudens die bepalings van artikel 21(b) en 25 van die Raamwerkwet op Tradisionele Leierskap en Regering, 2003, die aangeleentheid binne dertig dae na die Kommissie vir sy aanbeveling kan verwys; en
- (c) die Premier, in geval die Lid van die Uitvoerende Raad nie in staat is nie of in gebreke bly om die geskil by te lê, wat die geskil binne dertig dae moet bylê na oorlegpleging met —
  - (i) die verantwoordelike Lid van die Uitvoerende Raad;
  - (ii) die partye in die geskil; en
  - (iii) die Provinsiale Huis.

**Oorgrensreëlings**

50. Die Premier kan, na oorlegpleging met die verantwoordelike Lid van die Uitvoerende Raad, ooreenkomste met ander provinsiale regerings aangaan met betrekking tot aangeleenthede wat verband hou met tradisionele gemeenskappe, tradisionele leiers of tradisionele instellings in die geval waar die bestuur van sodanige aangeleenthede beter gedien kan word deur middel van 'n gesamentlike benadering deur die betrokke provinsiale regerings.

**Misdrywe en strawwe**

51.(1) 'n Persoon is skuldig aan 'n misdryf indien daardie persoon —

- (a) voorgee om 'n tradisionele leier ingevolge hierdie Wet te wees sonder die erkenning soos in hierdie Wet bedoel;
- (b) opsetlik die nakoming, vervulling of uitvoering belemmer van enige rol, bevoegdheid, funksie of plig wat in enige tradisionele leier, enige tradisionele raad, die Provinsiale Huis, enige Plaaslike Huis of die Kommissie setel of daaraan toegewys is soos bedoel in hierdie Wet of enige ander reg.

(2) 'n Persoon wat skuldig bevind word aan 'n misdryf bedoel in subartikel (1) is strafbaar met 'n boete of gevangenisstraf van hoogstens 12 maande, of beide die boete en gevangenisstraf.

**Oorgangsreëlings**

52.(1) Die verantwoordelike Lid van die Uitvoerende Raad moet, by kennisgewing in die *Koerant*, binne een jaar na die inwerkingtreding van die Raamwerkwet op Tradisionele Leierskap en Regering, 2003, alle streekowerhede ophef wat ingevolge toepaslike wetgewing ingestel is voor die inwerkingtreding van die voornoemde Wet.

(2) Die kennisgewing wat 'n streekowerheid ophef, moet die regs-, praktiese en ander gevolge van die opheffing reguleer, met inbegrip van —

- (a) die oordrag van bates, laste en administratiewe en ander rekords aan 'n provinsiale departement, munisipaliteit of Plaaslike Huis soos die omstandighede mag vereis;
- (b) die ontruiming van 'n amp deur enige ampsdraer van sodanige streekowerheid; en
- (c) die oorpasing van personeel van sodanige streekowerheid.

(3) Alle uitvoerende en administratiewe aksies wat deur die Provinsiale Regering te goeder trou verrig is met betrekking tot tradisionele gemeenskappe, lede van tradisionele gemeenskappe, tradisionele leiers, gemeenskapowerhede, streekowerhede of hulle onderskeie gebiede van jurisdiksie voor die inwerkingtreding van hierdie Wet word hierby geag wettig verrig te wees —



- (a) asof die vereiste regsgrondslag, met inbegrip van, maar nie beperk tot delegasies, opdragte, agentskapooreenkomste, volmagte of dienslewingskontrakte bestaan het toe sodanige aksies verrig is; of
- (b) waar die toe bestaande regsgrondslag met inbegrip van, maar nie beperk tot delegasies, opdragte, agentskapooreenkomste, volmagte of dienslewings-kontrakte nie ten volle nagekom is nie.

**Herroeping van wette**

53.(1) Die herroeping van die KwaZulu Wet op "the Code of Zulu Law", 1985 (Wet No. 16 van 1985) en die "Natal Code of Zulu Law, 1987 (Proklamasie No. R.151 van 1987) word van krag op 'n datum soos bepaal deur die verantwoordelike Lid van die Uitvoerende Raad by wyse van publikasie in die *Koerant*.

(2) Die oorblywende wette wat in die eerste en tweede kolom van Skedule 3 vermeld word, word hiermee herroep dermate uiteengesit in die derde kolom van sodanige skedule.

**Kort titel**

54. Hierdie Wet heet die KwaZulu-Natal Wet op Tradisionele Leierskap en Regering, 2005.

**BYLAE 1**  
**DIE NASIONALE EN PROVINSIALE GEDRAGSKODE**  
(Artikel 42)

**DEEL A: Die Provinsiale Gedragskode****Algemene gedrag**

1. Alle tradisionele leiers en lede van die Provinsiale Huis Tradisionale Leiers, die Plaaslike Huise van Tradisionele Leiers en tradisionele rade moet —

- (a) hulle funksies ter goeder trou, eerlik en op 'n deursigtige wyse uitoefen;
- (b) te alle tye in die beste belang van die gemeenskap optree wat deur hulle gedien word;
- (c) verseker dat die geloofwaardigheid en integriteit van tradisionele leierskap of tradisionele gesag nie onder verdenking geplaas word nie.

**Openbaarmaking van belange en persoonlike gewin**

2.(a) Tradisionele leiers, lede van die Provinsiale en Plaaslike Huise van Tradisionele Leiers en lede van 'n tradisionele raad —

- (i) moet enige regstreekse of onregstreekse persoonlike of private sakebelang openbaar wat 'n tradisionele leier, of enige eggenote, vennoot of sakekennis van daardie tradisionele leier of lid mag hê wat hom of haar kan verhinder om sy of haar funksies kragtens hierdie Wet op 'n regverdige, onbevooroordeelde en behoorlike wyse uit te oefen waar moontlike vooroordeel of botsing van belange mag voorkom, en hy of sy moet hom- of haarself onttrek waar sodanige aangeleentheid oorweeg word;
- (ii) kan nie die pos of voorregte wat kragtens hierdie Wet aan hom of haar ontleen is, vir private gewin of die onbehoorlike bevoordeling van ander gebruik nie; en
- (iii) nie 'n party tot of 'n bevooroordeelde van 'n ooreenkoms wees nie vir die voorsiening van goedere of dienste of werk vir die tradisionele raad, Provinsiale en distrikshuise van tradisionele leiers waarvan hy of sy 'n lid is sonder die skriftelike toestemming van die Provinsiale Huis van Tradisionele Leiers of die betrokke Plaaslike Huis van Tradisionele Leiers of tradisionele raad.

(b) Enige openbaarmaking, vasstelling of instemming in paragraaf (a) bedoel, moet in die notule van die vergadering van die Provinsiale Huis van Tradisionele Leiers of die betrokke Plaaslike Huis van Tradisionele Leiers of tradisionele raad genotuleer word.

**DEEL B: Die Nasionale Gedragskode****Algemene gedrag van tradisionele leier**

1. 'n Tradisionele leier —

- (a) moet die funksies wat aan hom of haar toegewys is ter goeder trou, ywerig, eerlik en op 'n deursigtige wyse uitoefen;
- (b) moet sy of haar rol doeltreffend vervul;
- (c) mag hom- of haarself nie op 'n skandalige of onbehoorlike wyse gedra nie;
- (d) moet aan toepaslike wetgewing voldoen;
- (e) moet in die beste belang optree van die tradisionele gemeenskap of gemeenskappe wat hy of sy dien;
- (f) moet eenheid onder tradisionele gemeenskappe bevorder;
- (g) mag nie aksies onderneem wat verdeeldheid in of onder tradisionele gemeenskappe veroorsaak nie;
- (h) moet nasiebou bevorder;
- (i) mag nie weier om enige diens aan 'n persoon weens politieke of ideologiese gronde te lewer nie;
- (j) moet goeie verhoudinge aanwakker met die staatsorgane met wie hy of sy in wisselwerking is;
- (k) moet die beginsels van 'n demokratiese en oop samelewing bevorder; en
- (l) geskenke wat ontvang word, openbaar.

**Algemene gedrag van tradisionele raad**

2. 'n Tradisionele raad moet —

- (a) die funksies wat aan hom toegewys is ter goeder trou, ywerig, eerlik en op 'n deursigtige wyse uitoefen;
- (b) sy pligte op 'n doeltreffende wyse vervul;
- (c) aan enige toepaslike wetgewing voldoen;
- (d) in die beste belang optree van die gemeenskap wat dit dien;
- (e) uitvoering gee aan die beginsels wat openbare administrasie reël soos uiteengesit in artikel 195 van die Grondwet; en
- (f) goeie verhoudinge aanwakker met die staatsorgane met wie dit in wisselwerking is.

**BYLAE 2****Eed of plegtige verklaring van lede van Provinsiale Huis van Tradisionele Leiers, Plaaslike Huise van Tradisionele Leiers en tradisionele rade**  
(Artikel 43)

*Ek, A.B., sweer/ verklaar plegtig trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal en dat ek die Grondwet en alle ander reg van die Republiek van Suid-Afrika sal gehoorsaam, eerbiedig en handhaaf, en belowe plegtig om die amp as lid van (voeg Provinsiale Huis van Tradisionele Leiers of naam van toepaslike Plaaslike Huis van Tradisionele Leiers of tradisionele raad hier in) met eer en waardigheid; onpartydig en sonder vooroordeel, vrees, begunstiging of beïnvloeding sal beklee, en om die rol en funksie van my amp met nougesetheid en na my beste vermoë te verrig.*

(In die geval van 'n eed: "So help my God".)

**BYLAE 3****Herroeping van wette**  
(Artikel 53)

<i>Nommer en jaar van wet</i>	<i>Titel</i>	<i>Omvang van herroeping</i>
Proklamasie No. R. 110 van 1957	Regulasies wat die Pligte, Bevoegdhede, Voorregte en Diensvoorwaardes van Kapteins en Hoofmanne voorskryf, 1957	In sy geheel
Wet No. 7 van 1974	KwaZulu Wet op "Tribal Taxation, 1974"	In sy geheel
Wet No. 17 van 1979	KwaZulu Wet op "Financial Regulations for Tribal and Community Authorities, 1979"	In sy geheel
Wet No. 16 van 1985	KwaZulu Wet op "the Code of Zulu Law, 1985"	In sy geheel
Proklamasie No. R. 151 van 1987	Natal Code of Zulu Law, 1987"	In sy geheel
Wet No. 9 van 1990	KwaZulu Wet op "Amakhosi and Iziphakanyiswa, 1990"	In sy geheel
Wet No. 6 van 1993	KwaZulu Wet op "the Payment of Salaries, Allowances and other Privileges to the Ingonyama, 1993"	In sy geheel
Wet No. 2 van 1994	KwaZulu-Natal Wetgewende Besoldigingswet, 1994	In sy geheel
Wet No. 7 van 1994	KwaZulu-Natal Wet op die Huis van Tradisionele Leiers, 1994	In sy geheel
Wet No. 5 van 1995	KwaZulu-Natal Amakhosi en Iziphakanyiswa Wysigingswet, 1995	In sy geheel
Provinsiale Kennisgewing No. 243 van 2000	Oorgangsmatreëls: Aanstelling van Munisipale Fasiliteringskomitee vir Gebied DC 29, 2000	In sy geheel