

TRADITIONAL LEADERS: THEIR PARTICIPATION IN LOCAL GOVERNMENT

The position of traditional leaders in local government was the last hurdle that had to be crossed before the election date could be announced by the Minister of Provincial and Local Government. The announcement was delayed three times as a technical team comprising of traditional leaders and officials of the Department sought to determine the impact of the new local government dispensation on traditional authorities. The matter has not been settled and the review of the legislation dealing with the issue is on the agenda. This article seeks to set out the current provision relating to the participation of traditional leaders in municipal councils and the affairs of municipalities.

Section 212(1) of the Constitution states that national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

Section 81 of the Municipal Structures Act 117 of 1998, as amended, is currently the only national legislation that provides for such a role. The role and status of a traditional leader / authority in municipal matters is explained through addressing the following questions:

Are traditional leaders entitled to participate in council proceedings?

In terms of section 81(1) of the Act the *traditional authority* is entitled to be represented. If there is a traditional leader but there is no traditional authority, that traditional leader cannot participate.

Who participates in council proceedings on behalf of the traditional authority?

In terms of section 81(1), a traditional leader represents the traditional

authority. The traditional leader who participates in the proceedings of a council must be identified by the MEC in a prescribed manner and must have a specific status.

How is that traditional leader identified?

In terms of Schedule 6 to the Act, the MEC must request the Provincial House of Traditional Leaders to recommend which leaders of a traditional authority must be identified. The traditional leader that is identified by the MEC must hold the supreme office of authority in the particular traditional authority and must be ordinarily resident in the municipal area in question. It is important to note that the house merely makes a recommendation. The MEC is bound by law to identify the most senior of the traditional leaders.

How many traditional leaders may attend and participate in a council meeting?

The number of traditional leaders that may participate in the proceedings of a municipal council may not exceed 20 per cent of the total number of councillors in that council. If the council has fewer than 10 councillors, only one traditional leader may participate. If the number of traditional leaders identified in a municipality's area of jurisdiction, exceeds 20 per cent of the total number of councillors the MEC for local government in the province may determine a system for the rotation of those traditional leaders.

What else can a traditional leader do besides attending and participating in council meetings?

Before a council takes a decision on *any matter directly affecting the area of a traditional authority*, the leader must be given opportunity to express a view on

the matter in terms of section 81(3) of the Act. It appears that the Act expects another way of soliciting this view than merely allowing the traditional leader to express her or his view during the council meeting where the matter is considered. If the MEC so decides, a broader role can also be prescribed for traditional leaders in the affairs of a municipality in terms of section 81(4)(b).

What does participation mean?

Stated differently, does the right to attend and participate, include the right to -

- submit motions, make proposals and ask questions?
- vote on any matter?

Participation means that one could address a meeting: the traditional leader is therefore not merely a silent observer of the proceedings. She or he may, subject to the rules and orders of the municipality and any regulation of the MEC in terms of section 81(4)(a) of the Act, therefore participate in any debate on a matter as if she or he is a councillor. This would include the right to submit motions, make proposals and ask questions. Her or his participation in a council meeting is not limited to the matters directly affecting the area of the traditional authority.

Can a traditional leader vote on any matter before a council?

Voting is quite a different matter. Section 160(3)(a) of the Constitution requires that the majority of the members of a council must be present before any matter may be put to the vote. Section 160(3)(b) of the Constitution requires that the so-called reserved powers of a council must be

decided by a supporting vote of the majority of the members of a council. The question is therefore: *Is the traditional leader who attends and participates in council meetings a member of the council in which she or he participates?*

The answer is no. Section 157(1) of the Constitution makes clear who is a member of a council: it is a person that was elected in terms of an election system prescribed in the Constitution or a person so elected that was appointed by one council to represent it in another council.

The traditional leader is not a member of the council in which she or he participates. She or he cannot be counted for the purpose of establishing whether a quorum is present, neither can she or he vote on any matter. Her or his role is similar to the role of organised local government in the National Council of Provinces.

Should the traditional leader be remunerated?

The Remuneration of Public Office-Bearers Act 1997 20 of 1997 regulates the remuneration of councillors. In terms of section 7 of that Act a council may pay to a member of the council a salary, allowances and benefits as may be determined by the Minister for Provincial and Local Government and with the consent of the MEC. A traditional leader is not a councillor. The municipality can therefore not remunerate her or him. Also, traditional leaders are already remunerated through the national fiscus; they should in principle not be entitled to be paid twice in the same capacity.

Can a traditional leader become a member of a committee of the municipality or hold any office in the municipality?

Here again, the answer is no. A traditional leader is not a councillor. She or he can therefore not become a member of any "regular" committee of a municipality. At best a traditional leader can be appointed as a member of an advisory committee in terms of

the Local Government: Municipal Systems Bill, Bill 27B of 2000.

Situation analysis in the Free State

There are 11 traditional authorities in the Free State. These are the Barolong-baa-Seleka traditional authority in the Thaba Nchu district and 10 tribal councils in Qwa-Qwa. The Barolong-baa-Seleka is entitled to be represented in the local municipal council of FS172 and the district municipal council of DC17. The 10 traditional authorities in Qwa-Qwa may be represented in the local municipal council of FS194 and the district municipal council of DC19.

The fact that there are also two recognised traditional leaders in Tsiame and Vrede is immaterial: there are no traditional/tribal authorities.

The *maximum number* of traditional leaders that may be identified and allowed to attend and participate in the proceedings of the relevant councils are as follows:

Table 1

Municipality	Councillors	20%
FS 172	86	17,2(say 17)
FS 194	67	13,4(say 13)
DC 17	41	8,2(say 8)
DC 19	38	7,6(say 8)

However, these figures are maxima, in other words may not be exceeded. Nothing in the Act suggests that any traditional authority is entitled to more than one traditional leader to participate in council proceedings. The only reason why section 81(1) of the Act refers to "leaders" is because the provision started with "traditional authorities". Second, the Schedule expressly requires the MEC to identify the most senior traditional leader of a traditional authority. Therefore, no traditional authority can and may have more than

one traditional leader as a representative. The limitation of 20 % was imposed to ensure that where there are more than 1 traditional authority in any municipal area (as is the case in Qwa-Qwa), a limited number of traditional leaders may attend and participate in the municipal council concerned.

In practice therefore, the following number of traditional leaders may attend and participate in council proceedings:

Table 2

Municipality	Councillors	20%
FS 172	86	1
FS 194	67	10
DC 17	41	1
DC 19	38	8

It also appears that the identified traditional leader must herself or himself attend and participate in the proceedings of a council. She or he cannot send a representative or proxy to a meeting.

Further regulation

The attendance and participation of a traditional leader in a municipal council falls within the power of that municipality to make rules and orders regarding its procedures and arrangements. That power is absolute. The MEC should not, until the White Paper on Traditional Leadership is published, try to change the roles of traditional leadership too much.

Conclusion

Recent discussion between the national government and traditional leaders about their role in the new local government dispensation has led to an undertaking to consider the matter afresh after the election. Any discussion of the matter may mean that changes may be affected to the system as set out in the Act at this time.

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The MEC can further regulate the role of traditional leaders in local government. The question is; should the MEC do so ?