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THE PRESIDENCY

No. 3745 **27 September 2023**

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 09 of 2022: The Traditional Courts Act, 2022

UMONGAMELI

No. 3745 **27 September 2023**

Lesi isaziso sokuthi uMongameli ugunyaze lo mthetho olandelayo futhi wenziwa ukuba utholakale emphakathini jikelele kulo mbhalo:—

Ino 09 kwe 2022: Umthetho Wezinkantolo Zendabuko, 2022

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*(English text signed by the President)
(Assented to 16 September 2023)*

ACT

To provide a uniform legislative framework for the structure and functioning of traditional courts, in line with constitutional imperatives and values; and to provide for matters connected therewith.

PREAMBLE

SINCE the remaining provisions of the Black Administration Act, 1927, and some provisions of former homeland legislation still regulate the resolution of disputes by the institution of traditional leadership, are in stark conflict with constitutional values;

AND SINCE there is a need to provide a legislative framework to replace the current inadequate legislative framework in order to—

- protect the public interest; and
- enhance accountability in the resolution of disputes in accordance with evolving customs and practices in the new constitutional dispensation;

AND SINCE the Constitution recognises the institution, status and role of traditional leadership in dispute resolution, as well as the application of customs and practices in traditional courts, subject to the Constitution;

AND SINCE it is necessary to replace the current legislative framework in terms of which disputes are resolved in terms of customary law, in line with constitutional imperatives and values, including the right to human dignity, the achievement of equality and the advancement of human rights and freedoms;

AND SINCE it is necessary to have a single statute applicable throughout the Republic, regulating the resolution of disputes in traditional courts in accordance with the Constitution;

AND RECOGNISING that the Constitution recognises customary law as a legal system that lives side by side the common law and legislation;

AND RECOGNISING that the Constitution guarantees everyone the right of access to the courts as contemplated in Chapter 8 of the Constitution for purposes of resolving their disputes;

AND FURTHER RECOGNISING that customary law plays an integral role in the resolution of disputes in communities between members of those communities who observe the accepted practices and customs applicable in those communities;

AND FURTHER RECOGNISING that the flexibility of customary law provides for consensus seeking and the prevention of and resolution of disputes and disagreements;

(English text signed by the President)
(Assented to 16 September 2023)

UMTHETHO

Ukuhlinzeka ngohlaka olufanayo lokushaywa komthetho wokwakheka kanye nokusebenza kwezinkantolo zendabuko, okuhambisana nezinto ezibalulekile zomthethosisekelo kanye namagugu awo; kanye nokuhlinzeka ngezindaba ezihlangene ngalokho.

ISETHULO

NJENGOBA imihlinzeco esele ye-*Black Administration Act*, 1927, kanye nemihlinzeco yokushaywa kwemithetho yezwe okwakungelendabuko isasebenza njengesisombuluko semibango yesikhungo sobuholi bendabuko, ehambisana namagugu omthethosisekelo;

FUTHI NJENGOBA kunesidingo sokuhlinzeka uhlaka lokushaywa komthetho ukufaka endaweni yohlaka lokushaywa komthetho olukhona olungaphelele ukuze—

- kuvikelwe izimfuno zomphakathi; futhi
- kwenziwe ngcono umthwalo esisombululweni semibango ngokuhambisana nemikhuba enqubeni entsha yomthethosisekelo;

FUTHI NJENGOBA uMthethosisekelo ubona isikhungo, isikhundla kanye nendima edlalwa ubuholi bendabuko ekusombululweni kombango, kanye nokusetshenziswa kwemikhuba ezinkantolo zendabuko, ngaphansi kwemibandela yoMthethosisekelo;

FUTHI NJENGOBA kunesidingo sokufaka endaweni yohlaka lokushaywa komthetho olukhona ngokwemigomo lapho imibango isonjululwe ngokwemigomo yomthetho wesintu, ngokuhambisana nezinto ezibalulekile kanye namagugu omthethosisekelo, okufaka phakathi ilungelo lesithunzi sabantu, ukuzuzwa kokulingana kanye nokuthuthukiswa kwamalungelo abantu kanye nenkululeko;

FUTHI NJENGOBA kuyadingeka ukuthi kube nesimiso esisodwa esisebenza kuyo yonke iRiphabhulikhi, esilawula ukusonjululwa kwemibango ezinkantolo zendabuko ngokuhambisana noMthethosisekelo;

FUTHI EKUBONENI ukuthi uMthethosisekelo wamukela umthetho wesintu njengohlelo lomthetho oluhambisana nomthetho wabantu bonke kanye nomthetho;

FUTHI EKUBONENI ukuthi uMthethosisekelo uqinisekisa wonke umuntu ngelungelo lokukwazi ukufinyelela ezinkantolo njengoba kuhlangoziwe Esahlukweni sesi-8 soMthethosisekelo ngezinhloso zokusombulula imibango yabo;

FUTHI UKUQHUBEKA NOKUBONA ukuthi umthetho wesintu udlala indima ebalulekile ekusonjululweni kwemibango emiphakathini phakathi kwamalunga aleyo miphakathi ebona, imikhuba namasiko amukelekayo asebenza kuleyo miphakathi;

FUTHI UKUQHUBEKA NOKUBONA ukuthi ukuguquguquka komthetho wesintu kuyahlinzekela ukufuna ukuvumelana kanye nokugwema nokuxazulula izingxabano nokungavumelani;

AND FURTHER RECOGNISING that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum;

AND FURTHER RECOGNISING that there are different levels of dispute resolution in terms of customary law, in addition to the role played by traditional courts,

Parliament of the Republic of South Africa therefore enacts as follows:—

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Definitions

1. (1) In this Act, unless the context indicates otherwise—
- “**clerk**” means a clerk of a traditional court referred to in section 5(4);
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**court**” means any court established in terms of section 166 of the Constitution; 30
- “**dispute**” means a dispute between parties of any nature, including a dispute arising out of customary law, which a traditional court is competent to deal with in terms of this Act;
- “**Minister**” means the Cabinet member responsible for the administration of justice; 35
- “**prescribed**” means prescribed by regulation in terms of section 17;
- “**Provincial Traditional Court Registrar**” means a Provincial Traditional Court Registrar contemplated in section 10, and “**Provincial Registrar**” has a corresponding meaning;
- “**restorative justice**”— 40
- (a) means an approach to the resolution of disputes that aims to involve all parties to a dispute, the families concerned and community members to collectively

FUTHI UKUQHUBEKA NOKUBONA ukuthi wonke umuntu unelungelo lokuthi abe nanoma imuphi umbango ongaxazululwa ngokusebenzisa umthetho onqunywe ngobulungiswa ekuqulweni kwecala ngaphambi kwenkantolo, noma lapho kufanele, enye inkundla ezimele noma engakhethi noma isigcawu;

FUTHI UKUQHUBEKA NOKUBONA ukuthi kunamazinga ahlukeni okusombulula imibango ngokwemigomo yomthetho wesintu, ekwengezeni eqhazeni elibanjwa yizinkantolo zendabuko,

IPhalamende laseRiphabhulikhi yaseNingizimu Afrika lishaya umthetho ngale ndlela elandelayo:—

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Izincazelo

- (1) Kulo Mthetho, ngaphandle uma ingqikithi iveza ngokunye—
 - “**umabhalane**” kusho umabhalane wenkantolo yendabuko okukhulunywe ngaye esigabeni sesi-5(4); 30
 - “**uMthethosisekelo**” kusho uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996;
 - “**inkantolo**” kusho noma iyiphi inkantolo esungulwe ngokwemigomo yesigaba se-166 soMthethosisekelo;
 - “**umbango**” kusho umbango phakathi kwezinhlobo zanamuhlanje zomthetho, okufaka phakathi umbango ongekho ngaphansi komthetho wesintu, lapho inkantolo yendabuko ikufanele ukubhekana nawo ngokwaloMthetho; 35
 - “**uNgqongqoshe**” kusho ilungu leKhabhinethi umsebenzi walo ongukuphathwa kobulungiswa;
 - “**okunqunyiwe**” kusho ukunqunywa isishayamthetho ngokwemigomo yesigaba se-17; 40
 - “**UMBhalisi weNkantolo yoMdabu esiFundazweni**” kusho uMbhali weNkantolo yoMdabu esiFundazweni okukhulunywe ngaye esigabeni se-10, futhi “**uMbhali Esifundazweni**” unencazelo ehambisanayo; 45
 - “**ubulungiswa obugcinekeyo**”—
- (a) kusho indlela yokusombulula imibango ehlosa ukufaka zonke izinhlobo ezmimbangweni, imindeni ebandakanyekayo kanye namalungu omphakathi

- identify and address harms, needs and obligations by accepting responsibility, making restitution and taking measures to prevent a recurrence of the incident which gave rise to the dispute and promoting reconciliation;
- (b) does not extend to measures which, in good faith, purport to give effect to the objectives contemplated in paragraph (a) but which, in fact, do not meaningfully restore the dignity of, or redress any wrong-doing against any, person involved in the dispute; and 5
- (c) results in redressing the wrong-doing in question and ensuring the restitution of the dignity of the person in question in a just and fair manner;
- “**this Act**” includes any regulation; 10
- “**traditional court**” means a customary institution or structure, which is constituted and functions in terms of customary law, for purposes of resolving disputes, in accordance with constitutional imperatives and this Act, and which is referred to in the different official languages as—
- (a) “*eBandla*” in isiNdebele; 15
- (b) “*Huvo*” in Xitsonga;
- (c) “*Inkundla*” in isiZulu;
- (d) “*iNkhundla*” in siSwati;
- (e) “*iNkundla*” in isiXhosa;
- (f) “*Kgoro*” in Sepedi; 20
- (g) “*Kgotla*” in Sesotho;
- (h) “*Khoror*” in Tshivenda;
- (i) “*Kgotla*” in Setswana; and
- (j) a tribunal for Khoi-San communities; and
- “**traditional leader**” means any person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and is recognised in terms of the applicable legislation providing for such recognition. 25
- (2) For purposes of this Act the term “customary law” must be construed as the accepted body of customs and practices of communities which evolve over time in accordance with prevailing circumstances, subject to the Constitution. 30

Objects of Act

2. The objects of this Act are to—
- (a) affirm the values of customary law and customs in the resolution of disputes, based on restorative justice and reconciliation and to align them with the Constitution; 35
- (b) affirm the role of traditional courts in terms of customary law by—
- (i) promoting co-existence, peace and harmony in the community;
- (ii) enhancing access to justice by providing a forum for dispute resolution in accordance with the principle that recognises participation by all parties; and 40
- (iii) promoting and preserving those traditions, customs and cultural practices that are beneficial to communities, in accordance with constitutional values;
- (c) create a uniform legislative framework regulating the structure and functioning of traditional courts in the resolution of disputes, in accordance with constitutional imperatives and values; 45
- (d) enhance the effectiveness, efficiency and integrity of traditional courts in the resolution of disputes; and
- (e) facilitate the full and meaningful participation without discriminating against any member of a community in a traditional court in order to create an enabling environment which promotes the rights enshrined in Chapter 2 of the Constitution. 50

- ukuthi ngokuhlanganyela bahlonze baphinde bakhulume ngomonakalo, izidingo kanye nezibopho ngokwamukela umthwalo, ukwenza izinxephezelo kanye nokwenza izindlela zokugwema ukuthi kuvinjwe kwenzeke isigameko esifanayo esiyimbangela yombango kanye nokugqugquzela ukubuyisana;
- (b) ayidluleli ezinyathelweni, ngokwethembeka okuhle, ezihlose ukuthi zifezekise izinjongo okukhulunywe ngazo endimeni (a) kodwa empeleni, ezingakwenzi ukubuyisela isithunzi ngendlela enengqondo, noma ukulungisa noma yikuphi ukona okubi kunoma yimuphi umuntu obandakanyekayo embangweni; kanye 5
- (c) nokuholela ekulungiseni okubi okukhulunywa ngakho kanye nokuqinisekisa ukubuyiselwa kwesithunzi somuntu okukhulunywa ngaye ngendlela elungile futhi enobulungiswa; 10
- “Io Mthetho”** ufaka phakathi noma imuphi umthethonqubo;
- “inkantolo yendabuko”** kusho isikhungo noma isakhiwo somdabu, esakhiwe bese kuthi imisebenzi yaso ngokwemigomo yoMthetho wesintu kanye nomkhuba ngezinhloso zokusombulula imibango, ngokuhambisana nezinto ezibalulekile zomthethosisekelo kanye nalo Mthetho, futhi okukhulunywe ngakho ezilimini ezahlukene ezisemthethweni njengalokhwe— 15
- (a) *“eBandla”* ngesiNdebele;
- (b) *“Huvo”* ngeXitsonga; 20
- (c) *“Inkundla”* ngesiZulu;
- (d) *“iNkhundla”* ngeSiswati;
- (e) *“iNkundla”* ngesiXhosa;
- (f) *“Kgoro”* ngeSepedi;
- (g) *“Kgotla”* ngeSesotho; 25
- (h) *“Khorro”* ngeTshivenda;
- (i) *“Kgotla”* ngeSetswana; kanye
- (j) nenkundla yemiphakathi yamaKhoi-San; kanye
- “umholi wendabuko”** kusho noma imuphi umuntu, ngokomthetho wesintu womphakathi womdabu othile, ophethe isikhundla sobuholi bendabuko futhi owaziwayo ngokomthetho osebenzayo maqondana nalokho. 30
- (2) Ngezinhloso zalo Mthetho igama “umthetho wesintu” kumele lakhiwe njengenxenye yemikhuba yemiphakathi eshintshayo ngokuhamba kwesikhathi ngokuhambisana nezimo ezikhona, okuncike kuMthethosisekelo.
- Izinhloso zomthetho** 35
2. Izinhloso zalo Mthetho—
- (a) ukuqinisekisa amagugu omthetho wesintu oshintshayo kanye nemikhuba yawo ekusonjululweni kwemibango, ngokususela ebulungisweni obugcinekayo kanye nokubuyisana kanye nokuhambisana noMthethosisekelo;
- (b) ukugcizelela indima edlalwa yizinkantolo zendabuko ngokwemibandela yomthetho wesintu— 40
- (i) ukukhuthaza ukuhlalisana, ukuthula kanye nokuzwana;
- (ii) ukwenza ngcono ukutholakala kobulungiswa ngokuhlinzeka izigcawu ukusombulula imibango ngokuhambisana nomgomo owamukela ukubamba iqhaza kwazo zonke izinhloso; kanye 45
- (iii) nokukhuthaza nokugcina lawo masiko, imikhuba yamasiko eyinzuzo emiphakathini ngokuhambisana nemigomo yomthethosisekelo;
- (c) ukwakha uhlaka lokushaywa komthetho olulawula isakhiwo kanye nokusebenza kwezinkantolo zendabuko ekusonjululweni kwemibango, ngokuhambisana nezinto ezibalulekile kanye namagugu omthethosisekelo; 50
- (d) ukwenza ngcono ukuba nomthelela, ukuqeqesheka kanye nobuqotho kwezinkantolo zendabuko ekusonjululweni kwemibango; kanye
- (e) nokwenza lula, ukubamba iqhaza ngokugcwele futhi okunomqondo ngaphandle kokubandlulula noma yiliphi ilungu lomphakathi enkantolo yendabuko ukuze kuzokwakheka indawo evumelayo negqugquzela amalungelo azezwe eSahlukweni sesi-2 soMthethosisekelo. 55

Guiding principles

3. (1) In the application of this Act, the following principles should apply:
- (a) The need to align traditional courts with the Constitution in so far as they relate to the resolution of disputes, so as to embrace the values enshrined in the Constitution, including— 5
 - (i) the right to human dignity;
 - (ii) the achievement of equality and the advancement of human rights and freedoms; and
 - (iii) the promotion of non-racialism and non-sexism and the freedom of sexual orientation and identity and religion; 10
 - (b) the promotion of restorative justice measures through mediation and conciliation;
 - (c) the development of skills and capacity of members of traditional courts in order to ensure the effective implementation thereof; and
 - (d) the need to promote and preserve values which are based on reconciliation and restorative justice. 15
- (2) In the application of this Act, the following should be recognised and taken into account:
- (a) The constitutional imperative that traditional courts, tribunals or forums, when— 20
 - (i) interpreting the Bill of Rights, must promote the values that underlie an open and democratic society, based on human dignity, equality and freedom; and
 - (ii) interpreting any legislation, and when developing the common law or customary law, must promote the spirit, purport and objects of the Bill of Rights; 25
 - (b) the existence of systemic unfair discrimination and inequalities or attitudes which are contrary to constitutional values or which have the propensity of precluding meaningful participation in traditional court proceedings by any person or group of persons, particularly in respect of gender, sex, including intersex, gender identity, sexual orientation, age, disability, religion, language, marital status and race, as a result of unfair discrimination, certain belief systems and harmful practices, brought about by colonialism, apartheid and patriarchy; 30
 - (c) the provisions of subsection (3), setting out conduct which infringes on the dignity, equality and freedom of persons and which is prohibited; 35
 - (d) the principles applied in the resolution of disputes in terms of customary law in terms of this Act are not, in all respects, the same as those applied or understood in other courts in the judicial system; and
 - (e) a founding value on which customary law is premised, is that its application is accessible to those who voluntarily subject themselves to that set of laws and customs. 40
- (3) (a) Without detracting from the generality of the provisions of this Act, the conduct set out in Schedule 1 to this Act is intended to illustrate and emphasise some customs and practices which infringe on the dignity, equality and freedom of persons and which are prohibited. 45
- (b) The State must, where appropriate, ensure that legislative and other measures are taken to address the practices referred to in paragraph (a).
- (c) The Minister must, on an ongoing basis, assess the relevance of the practices listed in Schedule 1 for purposes of making recommendations for the amendment of the list of practices. 50
- (d) The list of practices in Schedule 1 is not conclusive and must be considered and revised on a continuous basis.

Imigomo eqondisayo

3. (1) Ekusetshenzisweni kwalo Mthetho, imigomo elandelayo kumele isebenze:
- (a) Isidingo sokuthi izinkantolo zendabuko zihambisane noMthethosisekelo njengoba uphathelele nokusonjululwa kwemibango, ukwamukela izinto ezibalulekile kuMthethosisekelo, okufaka phakathi— 5
 - (i) ilungelo lesithunzi somuntu;
 - (ii) ukuzuzwa kokulingana kanye nokwenziwa ngcono kwamalungelo esintu kanye nenkululeko; kanye
 - (iii) nokukhuthaza ukungacwasi ngokwebala kanye nangokobulili kanye nenkululeko yobulili kanye nento umuntu akhetha ukuba iyona kanye nenkolo; 10
 - (b) ukukhuthazwa kwezindlela zobulungiswa ezigcinekayo ngokulamula kanye nokushweleza;
 - (c) ukuthuthukiswa kwamakhono kanye namandla amalungu ezinkantolo zendabuko ukuqinisekisa ukuqalisa kwazo ngempumelelo; kanye 15
 - (d) nesidingo sokukhuthaza kanye nokugcina izinto ezibalulekile ezigxile ekubuyisaneni kanye nobulungiswa obugcinekayo.
- (2) Ekusetshenzisweni kwalo Mthetho, lokhu okulandelayo kumele kubonwe futhi kufakwe emqondweni:
- (a) Izinto zomthethosisekelo eziyimpoqo izinkantolo zendabuko, izinkundla noma nezigcawu, lapho— 20
 - (i) ukuhumusha umthetho-nqubo wamaLungelo, kumele kukhuthaze izinto ezibalulekile ezingumsuka womphakathi ovulelekile futhi wentando yeningi, ogxile esithunzini sobuntu, ukulingana kanye nenkululeko; kanye 25
 - (ii) nokuhumusha umthetho-nqubo, futhi lapho kukhuthazwa umthetho owejwayelekile noma umthetho wesintu, kukhuthazwe umoya kanye nezinto zoMthethosivinywa wamaLungelo;
 - (b) ukuba khona kokucwasa kanye nokungalingani okungenabo ubulungiswa ngokohlelo noma indlela yokubona engahambisani nezinto ezikumthethosisekelo noma ezivame ukungavunyelwa ukubamba iqhaza okuzwakalayo ekulalelweni kwamacala enkantolo yendabuko kwanoma yimuphi umuntu noma iqembu labantu, ikakhulukazi maqondana nobulili okufaka phakathi ubulilimbili, ubulili ayibona, ubulili bokuzikhethelela, iminyaka, ukuphila ngokukhubazeka, inkolo, ulimi, isimo somshado kanye nebala, ngenxa ngokucwasa okungenabulungiswa, izinkolelo ezithile noma imikhuba enobungozi, eyalethwa ingcindezelo, ubandlululo kanye nokucindezelwa kwabesifazane; 30
 - (c) imihlinzeko yesigatshana sesi-(3), ibeka indlela yokuziphatha ethunaza isithunzi, ukulingana kanye nenkululeko yabantu futhi okungavunyelwe; 40
 - (d) imigomo esetshenziswayo ekusombululweni kwemibango ngokwemigomo yomthetho wesintu ngokwemigomo yalo Mthetho ayifani, ngazo zonke izindlela, nezisetshenziswe noma eqondwa kwezinye izinkantolo zokwahlulela; kanye
 - (e) nezisekelo sokusungulwa komthetho wesintu, ukuthi ukusetshenziswa kwawo kuyatholakala kulaba abafuna ngokuzithandela ukuthi usetshenziswe kubo leyo mithetho kanye nemikhuba. 45
- (3) (a) Ngaphandle kokuphikisa okwejwayelekile kwemihlinzeko yalo Mthetho, indlela yokuziphatha ebekwe kuSheduli yoku-1 yalo Mthetho, iqonde ukuveza kanye nokugcizelela ukuthi eminye imikhuba ethunaza isithunzi, ukulingana kanye nokukhululeka kwabantu futhi akuvumelekile. 50
- (b) UMBuso kumele, lapho kufanele, uqinisekise ukuthi ukushaywa kwemithetho kanye nezinye izindlela okumele zithathwe ukubhekana nemikhuba okukhulunywe ngayo esiqeshini (a).
 - (c) UNgqongqoshe kumele, njalo, ahlole ukufaneleka kwemikhuba ebalwe kuSheduli yoku-1 ngezinhloso zokwenza izincomo ukuze kuchitshiyelwe uhla lwemikhuba. 55
 - (d) Uhla lwemikhuba kuSheduli yoku-1 awuwona umqamula-juqu futhi kumele ucatshangwe uphinde ubuyekwezwe ngokuqhubeka.

Institution of proceedings in traditional courts

4. (1) (a) Any person may, subject to subsection (3), institute proceedings in respect of a dispute in any traditional court.

(b) A traditional court may hold a session thereof at a place other than where sessions of the traditional court in question ordinarily take place and, for that purpose, the traditional leader who ordinarily presides over the traditional court may, where necessary, in the presence of members of the community in the traditional court, delegate a person or persons to preside over such a session and indicate who may participate therein. 5

(2) (a) A traditional court may, subject to subsection (3), only hear and determine a dispute contemplated in Schedule 2— 10

(i) that is not being dealt with by any other person or structure recognised in terms of customary law for purposes of the resolution of disputes; or

(ii) that has been dealt with by any person or structure in terms of subparagraph (i) but there has not been any resolution of that dispute. 15

(b) A traditional court may not hear and determine a dispute which—

(i) is being investigated by the South African Police Service;

(ii) is pending before any other traditional court or any other court; or

(iii) has already been finalised by a court, which means that a verdict has been given in a criminal matter or final order has been made by the court in a civil matter. 20

(3) A traditional court may only determine or make an order in terms of section 8 in respect of any matter referred to in Schedule 2 to this Act: Provided that if a person approaches the traditional court for any relief in respect of any matter not referred to in Schedule 2 and the matter is placed before the court, nothing precludes such a traditional court from— 25

(a) counselling, assisting or guiding a party to the dispute who has approached it; or

(b) facilitating the referral of the matter to another traditional court, court or an appropriate institution or organisation, 30

and provided it is done in a manner that does not have the potential of influencing the proceedings or outcome of the matter in a court or forum which has jurisdiction to hear the matter.

(4) (a) The clerk of the traditional court must, if a party, after having been duly summoned to appear in and attend the proceedings of the traditional court, fails to so appear and attend such proceedings, make a determination to that effect and must thereafter refer the matter to a justice of the peace appointed by the Minister in terms of section 2 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), for purposes of this Act, who must deal with the matter in terms of the powers and duties as may be conferred or imposed on him or her under section 3 of the Justices of the Peace and Commissioners of Oaths Act, 1963. 40

(b) The role of the justice of the peace referred to in paragraph (a) is to facilitate compliance with the summons and for this purpose the justice of the peace has the following powers:

(i) If non-compliance is not due to fault on the part of the party against whom the summons was issued, the power to negotiate with the party to comply with the summons; and 45

(ii) if non-compliance is due to fault on the part of the party against whom the summons was issued, the power to request the traditional court to have the matter transferred to the Magistrate's Court having jurisdiction, as contemplated in section 14(1)(a). 50

Composition of and participation in traditional courts

5. (1) A traditional court must—

(a) consist of women and men, pursuant to the goal of promoting the right to equality as contemplated in section 9 of the Constitution; and

(b) be presided over by a traditional leader or any person designated by the traditional leader. 55

(2) Traditional courts must promote and protect the representation and participation of women, as parties and members thereof.

Isikhungo samacala ezinkantolo zendabuko

4. (1) (a) Noma yimuphi umuntu, maqondana nesigatshana sesi-(3), angaqala isimangalo maqondana nombango kunoma iyiphi inkantolo yendabuko.
- (b) Inkantolo yendabuko ingabamba iseshini endaweni okungeyona lapho amasheshini enkantolo yendabuko ajwayele ukubanjelwa khona futhi, ngaleyo nhloso, umholi wendabuko ojwayele ukwengamela inkantolo yendabuko, ebukhoneni kwamalungu enkantolo yendabuko, angathumela umuntu noma abantu ukuthi bengamele iseshini enjalo aphinde aveze ukuthi ubani ongabamba iqhaza lapho, uma kunesidingo. 5
- (2) (a) Inkantolo yendabuko, maqondana nesigatshana sesi-(3) ingalalela iphinde inqume umbango okukhulunywe ngawo kuSheduli yesi-2— 10
- (i) okungabhekanwa nawo nanoma yimuphi umuntu noma uhlaka okubhekwe ngokwemigomo yomthetho wesintu ngezinhloso zokusombulula imibango; noma
- (ii) okubhekenwe nawo yinoma yimuphi umuntu noma uhlaka ngokwemigomo yendinyana (i) kodwa bezingakakabi bikho izisombululo zalowo mbango; 15
- (b) Inkantolo yendabuko ingangalalela noma inqume umbango—
- (i) uma usaphenywa uPhiko Lwamaphoyisa eNingizimu Afrika;
- (ii) uma usamile ngaphambi kwenye inkantolo yendabuko okanye nanoma iyiphi enye inkantolo; noma
- (iii) uma usuphuthulwe yinkantolo, okusho ukuthi isinqumo sesikhishiwe odabeni lwecala noma isinqumo sokugcina sesenziwe odabeni lwecala. 20
- (3) Inkantolo yendabuko yenza isinqumo kuphela ngokwemigomo yesigaba sesi-8 maqondana nanoma yiluphi udaba okukhulunywe ngalo kuSheduli yesi-2 yalo Mthetho: Uma umuntu eza enkantolo ngenxa yokudinga noma iluphi usizo lwanoma iluphi udaba okungakhulunywanga ngalo kuSheduli yesi-2 futhi udaba lubekwe phambi kwenkantolo, Ayikho into evimbela inkantolo yendabuko enjalo— 25
- (a) ukuthi yeluleke, isize noma iqondise izinhloso ezize ngaphambi kwenkantolo yendabuko; noma
- (b) ukuthi isize ukudlulisa icala ukuthi liye kwenye inkantolo yendabuko, inkantolo noma isikhungo noma inhlangothi efanele, futhi uma kwenziwe ngendlela engenakho ukuba nomthelela ecaleni noma emphumeleni wodaba enkantolo noma isigcawu esinegunya lokulalela udaba. 30
- (4) (a) uma uhlangothi oluthintekayo selubiziwe ngokufanele ukuthi luzovela futhi luthamele ukuqhutshwa kwecala enkantolo yendabuko, bese lungaphumeleli umabhalane wenkantolo yendabuko kumele enze isinqumo salokho bese adlulise izindaba aziyise kwabobulungiswa bokuthula abaqokwe uNgqongqoshe ngokwesigaba se-2 *Justices of the Peace and Commissioners of Oaths Act*, 1963 (Umthetho Nom. 16 wezi-1963), ngezinhloso zalo Mthetho, okumele ubhekane nodaba ngokwamandla kanye nemisebenzi kungathweswa noma kuphoqelelwe kuye ngaphansi kwesigaba sesi-3 se-*Justices of the Peace and Commissioners of Oaths Act*, wezi-1963. 35
- (b) Indima edlalwa abezobulungiswa bokuthula okukhulunywe ngabo esiqeshini (a) ukusiza ukulandelwa kokubizwa futhi ngale nhloso ubulungiswa bokuthula bunamandla alandelayo: 40
- (i) uma kungalandelwanga ukubizwa ngenxa yephutha lohlaka olubiziwe, amandla okuxoxisana nohlaka ukuthi lulandele ukubizwa; futhi 45
- (ii) uma engaphumelelanga ebizwa ngenxa yephutha lohlaka olubiziwe, amandla okucela inkantolo yendabuko ukuthi udaba ludluliselwe enkantolo yemantshi enegunya, njengoba kushiwo esigabeni se-14(1)(a). 50

Ukwakhiwa kanye nokubanjwa kweqhaza ezinkantolo zendabuko

5. (1) Inkantolo yendabuko kumele— 50
- (a) ibe nabesifazane kanye nabesilisa, kuqhutshwa umgomo wokukhuthaza ilungelo lokulingana njengoba kushiwo esigabeni sesi-9 soMthethosisekelo; futhi
- (b) yenganyelwe umholi wendabuko noma imuphi umuntu oqokwe umholi wendabuko. 55
- (2) Izinkantolo zendabuko kumele zikhuthaze futhi zivikele ukumelwa kanye ngokubamba iqhaza kwabantu besifazane, njengezinhloso noma amalungu enza.

- (3) (a) The Cabinet member responsible for the administration of justice must—
- (i) put measures in place in order to promote and protect the fair representation and participation of women, as parties and members in traditional courts in order to create an environment that facilitates and promotes the meaningful and voluntary participation of women in accordance with the constitutional value of non-sexism; 5
 - (ii) put measures in place in order to promote and protect vulnerable persons, with particular reference to the elderly, children and the youth, the indigent, persons with disabilities and persons who are subject to discrimination on the basis of sexual orientation or gender identity; and 10
 - (iii) by not later than 30 September of every year, submit a prescribed report to Parliament containing the information contemplated in subparagraphs (i) and (ii).
- (b) The Commission for Gender Equality referred to in Chapter 9 of the Constitution must, in its report to Parliament each year, report on the participation of women and the promotion of gender equality in traditional courts and may, to this end, make recommendations on legislative and other measures. 15
- (4) (a) For every traditional court there must be a clerk of a traditional court who is appointed, designated or seconded in accordance with the laws governing the public service and who has the powers, duties and functions as set out in this Act or as may be prescribed. 20
- (b) The role, functions and responsibilities of the clerk of a traditional court include the following:
- (i) Issuing summonses;
 - (ii) keeping an attendance register of sessions of traditional courts; 25
 - (iii) keeping records of proceedings of traditional courts;
 - (iv) keeping record of all cases reported to traditional courts;
 - (v) filing decisions of traditional courts with the Provincial Registrar;
 - (vi) advising traditional courts on cases that should be referred to any other customary institution or structure or court or forum; 30
 - (vii) transferring disputes to any other traditional court, court or forum;
 - (viii) dealing with, recording and filing the information received in the prescribed manner; and
 - (ix) submitting prescribed reports at the end of each quarter of a financial year to the Provincial Registrar to be dealt with in the prescribed manner. 35
- (5) Before commencing any session of a traditional court the traditional leader presiding over the traditional court or the person designated by him or her must say the prescribed pledge that he or she will promote and protect the values enshrined in the Constitution and this Act.

Nature of traditional courts 40

6. (1) Traditional courts—
- (a) are courts of law the purpose of which is to promote the equitable and fair resolution of certain disputes, in a manner that is underpinned by the value system applicable in customary law; and
 - (b) function in accordance with customary law, subject to the Constitution. 45
- (2) Traditional courts must be constituted and function under customary law so as to—
- (a) promote access to justice;
 - (b) prevent conflict;
 - (c) maintain harmony; and 50
 - (d) resolve disputes where they have occurred,
- in a manner that promotes restorative justice, Ubuntu, peaceful co-existence and reconciliation, in accordance with constitutional imperatives and the provisions of this Act.
- (3) The traditional court system is made up of the following levels of traditional leadership as contemplated in the applicable legislation providing for the recognition of traditional leadership and recognised in terms of customary law: 55
- (a) A headman or headwoman's court;
 - (b) a senior traditional leader's court;

- (3) (a) Ilungu leKhabhinethi eliphethe ezobulungiswa kumele—
- (i) lenze izindlela ukuthi kukhuthazwe kuphinde kuvikelwe ukumelwa kanye ngokubamba iqhaza kwabesifazane, njengezinhlaka kanye namalungu ezinkantolo zendabuko ukuze kwakheke indawo esiza iphinde ikhuthaze ukubamba iqhaza okuzwakalayo futhi kokuzithandela kwabantu besifazane ngokuhambisana nokubaluleka kokungacwasi ngokobulili okutholakala kuMthethosisekelo; 5
- (ii) lenze izindlela ukuthi kukhuthazwe kuphinde kuvikelwe abantu ababuthaka, ikakhulukazi abantu abadala, izingane kanye nentsha, abantu abahlwempu, abantu abaphila nokukhubazeka kanye nabantu ababhekene nokucwaswa ngenxa yobulili abazikhethele bona kanye nobulili abayibo; kanye 10
- (iii) ngaminyaka yonke zingakashayi mhla zingama-30 kuMandulo, kumele lihambise umbiko onqunyiwe ePhalamende onemininingwane okukhulunywe ngayo emishwananeni (i) kanye no-(ii).
- (b) IKhomishana yokuLingana Ngokobulili okukhulunywe ngayo kuSiqephu sesi-9 soMthethosisekelo, embikweni wayo oya ePhalamende ngaminyaka yonke, kumele ibike ngokubamba iqhaza kwabantu besifazane kanye nokukhuthazwa kokulingana ngokobulili ezinkantolo zendabuko futhi, kuze kube sekugcineni, ingenza izincomo ekushayweni komthetho kanye nezinye izindlela. 15
- (4) (a) Inkantolo yendabuko ngayinye kumele ibe nomabhalane wenkantolo yendabuko oqokiwe, noma osekelwe ngokuhambisana nemithetho ephethe imisebenzi yomphakathi kanye nenamandla, imisebenzi ebekwe kulo Mthetho noma onganqunywa. 20
- (b) Iqhaza kanye nemisebenzi kamabhalane wenkantolo yendabuko ifaka lokhu okulandelayo:
- (i) Ukukhipha incwadi ebizela enkantolo; 25
- (ii) ukugcina irejista yabantu abathamela amaseshini ezinkantolo zendabuko;
- (iii) ukugcina amarekhodi amacala asezinkantolo zendabuko;
- (iv) ukugcina onke amacala abikwe ezinkantolo zendabuko;
- (v) ukufayela izinqumo zezinkantolo zendabuko kuMbhalisi wesiFundazwe;
- (vi) ukuyala izinkantolo zendabuko emacaleni okumele adluliselwe kunoma yisiphi isikhungo noma uhlaka noma inkantolo noma izigcawu yendabuko; 30
- (vii) ukudlulisa imibango kunoma iyiphi enye inkantolo yendabuko, inkantolo noma izigcawu;
- (viii) ukubhekana, ukuqopha kanye nokufayela imininingwane etholwe ngendlela enqunyiwe; kanye 35
- (ix) nokuhambisa imibiko enqunyiwe ekupheleni kwekota wonyaka wezimali kuMbhalisi wesiFundazwe ukuthi kubhekanwe nayo ngendlela efanele.
- (5) Ngaphambi kokuqala iseshini yenkantolo umholi wendabuko owengamele inkantolo noma umuntu oqokwe wuye kumele asho isiqinisekiso esinqunyiwe ukuthi uzokhuthaza aphinde avikele izinto ezibalulekile ezivezwe kuMthethosisekelo kanye nakulo Mthetho. 40

Isimo sezinkantolo zendabuko

6. (1) Izinkantolo zendabuko—
- (a) yizinkantolo zomthetho ezihlose ukukhuthaza izisombululo zemibango ethile ngokulingana kanye nangobulungiswa, ngendlela esekelwa izinga lohlelo olufanele emthethweni wesintu; kanye 45
- (b) nomsebenzi ngokuhambisana nomthetho wesintu, kuncike kuMthethosisekelo.
- (2) Izinkantolo zendabuko, kumele zifakwe ngaphansi komthetho wesintu futhi zisebenze ngaphansi kwawo ukuze— 50
- (a) kukhuthazwe ukutholakala kobulungiswa;
- (b) kuvikelwe ukushayisana;
- (c) kugcinwe ukuthula; futhi
- (d) kusonjululwe imibango lapho yenzeke khona, ngendlela ekhuthaza ubulungiswa obugcinekayo, ubuntu, ukuhlalisana ngokuthula kanye nokubuyisana, ngokuhambisana nezinto ezibalulekile kuMthethosisekelo kanye nemihlinzeko yalo Mthetho. 55
- (3) Uhlelo lwenkantolo yendabuko lwakhiwe ilezi zigaba ezilandelayo zobuholi bendabuko njengoba kuhlangezwe emthethweni osebenzayo ohlinzekela ukwamukelwa kobuholi bendabuko futhi buhlonishwa ngokomthetho wesintu: 60
- (a) Inkantolo yenkosi noma yenkosi yesifazane;
- (b) inkantolo yomholi wendabuko omkhulu;

- (c) a principal traditional leader's court; and
- (d) a king or queen's court, where available.

Procedure in traditional courts

7. (1) Sessions of a traditional court are held at the time and at a place which is accessible to members of the community in question. 5
- (2) Subject to subsection (3), the procedure at any proceedings of a traditional court, including the notice to attend the proceedings of that traditional court and the manner of preserving the dignity of the traditional court and the manner of execution of any order imposed by it, must be in accordance with customary law and custom.
- (3) During its proceedings, a traditional court must ensure that— 10
- (a) the rights contained in the Bill of Rights in Chapter 2 of the Constitution are observed and respected, with particular reference to the following:
 - (i) That women, as parties to any proceedings or members of the traditional court, are afforded full and equal participation in the proceedings, as men are; and 15
 - (ii) that vulnerable persons, with particular reference to children, the elderly, the youth, the indigent, persons with disabilities and persons who are subject to discrimination on the basis of sexual orientation or gender identity, are treated in a manner that takes into account their vulnerability; and 20
 - (b) the following rules of natural justice are adhered to:
 - (i) That persons who may be affected by a decision must be given a fair hearing by the traditional court before the decision is made; and
 - (ii) that any decision by the traditional court must be impartial.
- (4) (a) Subject to paragraph (b), a party to a dispute before a traditional court may be assisted by any person of his or her choice in whom he or she has confidence. 25
- (b) No party to any proceedings before a traditional court may be represented by a legal practitioner acting in that capacity.
- (5) (a) Where two or more different systems of customary law may be applicable in a dispute before a traditional court, the traditional court must apply the system of customary law that the parties expressly agree should apply. 30
- (b) In the absence of any agreement contemplated in paragraph (a), the traditional court must decide the matter in accordance with the following guidelines:
 - (i) The system of customary law applicable in the area of the traditional court should take precedence over any other system of customary law; or 35
 - (ii) the traditional court may apply the system of customary law with which the parties or the issues in the dispute have their closest connection.
- (6) Traditional courts must be open to all members of the community.
- (7) Proceedings of traditional courts must be conducted in the presence of both parties to the dispute and traditional courts must allow the full participation of all interested parties without discrimination on any of the prohibited grounds of unfair discrimination referred to in section 9(3) of the Constitution. 40
- (8) The customary law of procedure and evidence applies in traditional courts.
- (9) Subject to the provisions of subsection (10), the proceedings and records of traditional courts, as contemplated in section 13, must be in the language most widely spoken in the area of the traditional court in question. 45
- (10) If any of the parties does not understand the language used in the traditional court, an interpreter must be provided.
- (11) The Minister, in consultation with the Cabinet member responsible for traditional affairs and the National House of Traditional and Khoi-San Leaders, may by notice in the *Gazette*, determine fees payable to a traditional court in terms of customary law. 50
- (12) A member of the traditional court must declare any direct personal interest that he or she or his or her immediate family member may have in a dispute before a traditional court in which that member is participating, and where appropriate, withdraw from participating in the resolution of that dispute. 55

- (c) inkantolo yomholi wendabuko oyinhloko; futhi
 (d) nenkantolo yenkosi noma yendlovukazi, lapho itholakala khona.

Inqubo yezinkantolo zendabuko

7. (1) Amaseshini enkantolo yendabuko kumele abanjwe ngesikhathi kanye nendawo eseduze namalungu omphakathi. 5
- (2) Maqondana nesigatshana sesi-(3), inqubo yanoma iliphi icala enkantolo yendabuko, okufaka phakathi isaziso sokuthamela icala laleyo nkantolo yendabuko kanye nendlela yokugcina isithunzi senkantolo yendabuko kanye nendlela yesigwebo esikhishwe yiyo, kumele ihambisane nomthetho wesintu kanye nemikhuba yawo. 10
- (3) Ngesikhathi secala, inkantolo yendabuko kumele iqinisekise ukuthi— 10
- (a) amalungelo aqukethwe uMthethosivivinywa wamaLungelo esaHlukweni sesi-2 soMthethosisekelo abhekiwe futhi ahlonishwa, ngokubheka okulandelayo:
- (i) Ukuthi abantu besifazane, njengezinhlaka kunoma imaphi amacala noma amalungu enkantolo yendabuko, bayakwazi ukubamba iqhaza ngokugcwele futhi ngokulingana emacaleni, njengamadoda; futhi 15
- (ii) nabantu ababuthaka, okufaka phakathi abantwana, abadala, intsha, abahlwempu, abantu abaphila nokukhubazeka kanye nabantu ababhekene nokucwasa ngenxa yobulili abayibo kanye nobulili abazikhethele bona, baphathwa ngendlela ebhekelela ubuthaka babo; kanye 20
- (b) nemithetho elandelayo yobulungiswa bemvelo kuhlenganiswa:
- (i) Ukuthi abantu abangathinteka ngesinqumo kumele balalelwe ngokulingana yinkantolo yendabuko ngaphambi kokwenza isinqumo; kanye 25
- (ii) nokuthi noma yisiphi isinqumo esenziwe yinkantolo yendabuko kumele singakhethi. 25
- (4) (a) Maqondana nesiqephu (b), uhlaka lombango ngaphambi kwenkantolo yendabuko lungasizwa yinoma imuphi umuntu oqokwe yilo noma elimthembayo.
- (b) Alukho uhlaka kunoma iliphi icala ngaphambi kwenkantolo yendabuko engamelwa owezomthetho obambe lawo mandla.
- (5) (a) Lapho izinhlelo ezahlukene ezimbili noma ngaphezulu zomthetho wesintu zisebenza embangweni ngaphambi kwenkantolo yendabuko, inkantolo yendabuko kumele isebenzise uhlelo lwenkantolo yesintu izinhlelo ezivumelana ukuthi lusetshenziswe. 30
- (b) Ekungabini bikho kwesivumelwano okukhulunywe ngaso esiqeshini (a), inkantolo yendabuko kumele ithathe isinqumo ngokuhambisana nale mihlahlandlela: 35
- (i) Uhlelo lomthetho wesintu lusetshenziswa endaweni yenkantolo yendabuko kumele lufakwe endaweni yanoma iluphi uhlelo lomthetho wesintu; noma
- (ii) inkantolo yendabuko ingasebenzisa uhlelo lomthetho wesintu lapho izinhlelo noma uhlelo umbango ohambisana kakhulu nalo.
- (6) Izinkantolo zendabuko kumele zivuleleke kuwo wonke amalungu omphakathi. 40
- (7) Ukuqhutshwa kwamacala ezinkantolo zendabuko kumele kulalelwe zikhona zombili izinhlelo zombango futhi izinkantolo zendabuko kumele zivumele ukubamba iqhaza okugcwele kwazo zonke izinhlelo ezifunayo ngaphandle kokucwasa nganoma iziphi izizathu ezingavumelekile zokucwasa okungenabo ubulungiswa okukhulunywe ngakho esigabeni sesi-9(3) soMthethosisekelo. 45
- (8) Umthetho wesintu wenqubo kanye nobufakazi usebenza ezinkantolo zendabuko.
- (9) Maqondana nemihlinzeko yesigatshana se-(10), amacala kanye namarekhodi ezinkantolo zendabuko, njengoba kushiwo esigabeni se-13, kumele kube ngolimi olukhulunywa kakhulu endaweni lapho kukhona khona inkantolo yendabuko.
- (10) Uma noma iziphi izinhlelo zingaluqondi ulimi olusetshenzisiwe enkantolo yendabuko, kumele kuhlinzekwe ngotolika. 50
- (11) UNGqongqoshe, ngokubonisana nelungu leKhabhinethi elibhekele izindaba zendabuko kanye neNdlu Kazwelonke Yabaholi Bendabuko nama Khoi-San, ngesaziso kwiGazethi, inganquma izimali ezikhokhwa enkantolo yendabuko ngokomthetho wesintu. 55
- (12) Ilungu lenkantolo yendabuko kufanele lisho noma yikuphi ukuthinteka noma ukuxhumaniseka elinakho okuyimfihlo lona noma ilungu lomndeni walo eliseduze elingaba nakho kwingxabano esenkantolo yendabuko lapho lelo lungu libamba iqhaza, futhi lapho kufanele khona, lihoxe ekubambeni iqhaza ekuxazululeni leyo ngxabano.

Orders that may be made by traditional courts

8. (1) A traditional court may make any of the following orders after having deliberated on a dispute before it:
- (a) An order in favour of the party who instituted proceedings in terms of section 4(1), expressed in monetary terms or otherwise, including livestock— 5
 - (i) accepting a settlement between the parties to the dispute;
 - (ii) for the payment of any damages in respect of any proven financial loss;
 - (iii) for the payment of compensation; or
 - (iv) for the payment of damages to an appropriate body or organisation which is not connected in any manner whatsoever to a member of the traditional court or a traditional leader: 10

Provided that any such order expressed in monetary terms or otherwise, including livestock, may not exceed the value of the damage giving rise to the dispute in question or the amount determined by the Minister from time to time by notice in the *Gazette*, for this purpose, whichever is the lesser; 15
 - (b) an order directing a party against whom proceedings were instituted in terms of section 4(1) who is financially not in a position to comply with any order contemplated in paragraph (a), to render to the aggrieved party some specific benefit or service instead of compensation for damage or pecuniary loss, with the consent of both parties; 20
 - (c) an order directing a party against whom proceedings were instituted in terms of section 4(1) who is financially not in a position to comply with any order contemplated in paragraph (a), to render without remuneration some form of service— 25
 - (i) for the benefit of the community; or
 - (ii) for the benefit of any person or persons in the community in need who, in the opinion of the members of the traditional court, are deserving of that service, 30

under the supervision or control of a person or group of persons identified by the traditional court who, in the opinion of the traditional court, promote the interests of the community and who must upon the completion or otherwise of the service in question report to the traditional court thereon: Provided that no service whatsoever may be rendered to a traditional leader or his or her family or to any person acting in an official capacity in that traditional court; 35
 - (d) an order prohibiting the conduct complained of or directing that specific steps be taken to stop or address the conduct being complained of; 35
 - (e) an order accepting an unconditional apology where such an apology is a voluntary settlement between the parties themselves;
 - (f) an order reprimanding a party or parties to the dispute for the conduct complained of; 40
 - (g) an order requiring a party or parties to keep the peace;
 - (h) an order that a party attends any form of training, orientation or rehabilitation that is consistent with the relevant customary law and customary practices, the Constitution and this Act and does not include any form of detention or deprivation of any customary law benefits; 45
 - (i) an order requiring any party to the dispute to make regular progress reports to the traditional court regarding compliance with any condition imposed by the traditional court;
 - (j) an order directing that the matter be submitted to the national prosecuting authority for the possible institution of criminal proceedings in terms of the common law or relevant legislation; or 50
 - (k) an order, containing a combination of any of the orders contemplated in paragraphs (a) to (i), except where the matter is referred to the national prosecuting authority under paragraph (j), in which event the decision of the national prosecuting authority prevails. 55

Imiyalelo engenziwa yizinkantolo zendabuko

8. (1) Inkantolo yendabuko ingenza imiyalelo elandelayo ngemuva kokukhulumisana ngombango ngaphambi kwayo:
- (a) Umyalelo ovuna uhlaka oluqale icala ngokwemigomo yesigaba sesi-4(1), ovezwe emigomeni yemali noma ngokunye, okufaka phakathi imfuyo— 5
- (i) yokwamukela isivumelwano phakathi kwezinhlaka ezisembangweni;
- (ii) yokukhokhela umonakalo maqondala nobufakazi benani lemali elilahlekile;
- (iii) yokukhokhela isinxephezelo; noma
- (iv) ukukhokhela umonakalo ohlakeni noma inhlango okufanele okungaxhumene nangayiphi indlela nelungu lenkantolo yendabuko noma umholi wendabuko: 10
- Uma kushiwo ukuthi umyalelo onjalo wenziwa ngendlela yemali noma ngokunye, okufaka phakathi imfuyo, ingangeqa enanini lomonakalo olwenyusa umbango okukhulunywe ngawo noma inani elinqunywe uNgqongqoshe wesikhathi ngesikhathi ngesaziso kuSomqulu, ngale nhloso, noma encane; 15
- (b) umyalelo oyalela uhlaka oluvulelwe icala ngokwemigomo yesigaba sesi-4(1) olungeke likwazi ukulandela noma imuphi umyalelo okukhulunywe ngawo esiqeshini (a) ngenxa yesimo sakhe sezimali, ukunika uhlaka olufake isikhalazo okuthile noma ukusebenza okunokuxhephezela umonakalo noma ukulahlekelwa okuyimali, ngemvume yenhlaka zombili; 20
- (c) umyalelo oyalela uhlaka oluvulelwe icala ngokwemigomo yesigaba sesi-4(1) ngokwesimo sakhe semali ngeke akwazi ukulandela noma imuphi umyalelo okukhulunywe ngawo osesiqeshini (a), enze umsebenzi othile ngaphandle kokukhokhelwa— 25
- (i) okuzuzisa umphakathi; noma
- (ii) okuzuzisa loyo muntu noma labo bantu emphakathini abantulayo, laba ngokwemibono yamalungu enkantolo yendabuko, bayaludinga lolo sizo, ngaphansi kokuqashwa noma ukulawulwa umuntu noma iqembu labantu abaqokwe yinkantolo yendabuko, ngombono wenkantolo yendabuko, oqququzela izimfuno zomphakathi futhi ekuqedeni noma okunye umsebenzi loyo abike enkantolo yendabuko: Uma umsebenzi loyo ungenzelwa umholi wendabuko noma umndeni wakhe noma yinoma imuphi umuntu onamandla asemthethweni enkantolo yendabuko; 30
- (d) umyalelo ovimbela isikhalazo zokuziphatha noma oqondisa lezo zinyathelo okumele zithathwe ukumisa noma ukubhekana nesikhalazo sokuziphatha leso; 35
- (e) umyalelo wokwamukela ukuxolisa okungenamibandela lapho lokho kuxolisa okunjalo kube isinqumo izinhlangothi ezizithathele sona ngokwazo ukuba zithelelane amanzi; 40
- (f) umyalelo ojezisa uhlaka noma izinhlaka ezisembangweni ngesikhalazo sokuziphatha esifakiwe;
- (g) umyalelo odinga ukuthi uhlaka noma izinhlaka zigcine ukuthula;
- (h) umyalelo othi uhlaka luhambele noma iluphi uhlobo lokuqeqeshwa, ukufundiswa kanye nokungena ohlelweni lwezokuhlunyelelwa kwezimilo okuhambisana nomthetho wesintu kanye nemikhuba yesintu efanele, uMthethosisekelo kanye nalo Mthetho futhi awufaki phakathi noma iluphi uhlobo lokuvallelwa oma ukuvinjelwa kwanoma iyiphi inzuzo yenkantolo yesintu; 45
- (i) umyalelo odinga ukuthi noma iluphi uhlaka lombango ukuthi livame ukwenza imibiko eyejwayelekile enkantolo yesintu mayelana nokuhambisana nanoma isiphi isomo esiphokelelwe inkantolo yendabuko;
- (j) umyalelo oqondisa ukuthi udaba luhanjiswa ophikweni lezokushushisa kuzwelonke ukuze liyiswe esikhungweni esifanele secala ngokwemigomo yomthetho owejwayelekile noma umthetho-nqubo ofanele; noma 55
- (k) umyalelo, oqukethe inhlanganisela yemiyalelo okukhulunywe ngayo eziqeshini (a) kuya ku-(i), ngaphandle lapho udaba oludluliselwe ophikweni lezokushushisa kuzwelonke ngaphansi kwesiqephu (j), odabeni lokuphumelela lwesinqumo sophiko lezokushushisa kuzwelonke. 60

(2) A traditional court may order that any payment contemplated in subsection (1) be paid in full or instalments and at a time or times it deems just.

(3) A traditional court may order that any payment contemplated in subsection (1) or part thereof be paid to a person injured by an act or omission for which the payment was imposed, on condition that such a person, if he or she accepts the payment, may not bring an action in any court in order to recover damages for the injury he or she sustained. 5

Enforcement of orders of traditional courts

9. (1) If an order made by a traditional court is not satisfied within the period determined by the traditional court, the party in whose favour the order was made, may bring the matter to the attention of the clerk. 10

(2) The clerk must inquire into or cause to be inquired into, the reasons for non-compliance with the order and make a determination as to whether the non-compliance is due to fault on the part of the party against whom the order was made.

(3) If the clerk finds that the non-compliance is not due to fault on the part of the party against whom the order was made, he or she must assist the party to comply with the order on such conditions as may be agreed upon between the parties. 15

(4) (a) If the clerk finds that the non-compliance is due to fault on the part of the party against whom the order was made, he or she must make a determination to that effect and must thereafter refer the matter to a justice of the peace appointed by the Minister in terms of section 2 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), for purposes of this Act, who must deal with the matter in terms of the powers and duties as may be conferred or imposed on him or her under section 3 of the Justices of the Peace and Commissioners of Oaths Act, 1963. 20

(b) The role of the justice of the peace referred to in paragraph (a) is to facilitate compliance with the order made by the traditional court and for this purpose the justice of the peace has the following powers: 25

- (i) If non-compliance is not due to fault on the part of the party against whom the order was made, the power to negotiate with the parties on how and when the order will be complied with and to make a determination in accordance therewith; and 30
- (ii) if non-compliance is due to fault on the part of the party against whom the order was made, the power to summons the party to appear in the traditional court again in order to have the matter transferred to the Magistrate's Court having jurisdiction, as contemplated in section 14(1)(a), to be dealt with afresh. 35

Provincial Traditional Court Registrars

10. (1) (a) In provinces where there are traditional courts, the Minister must, after consultation with the Cabinet Member responsible for traditional affairs, and subject to the laws governing the public service, designate, second or appoint persons as Provincial Traditional Court Registrars in respect of each province. 40

(b) A Provincial Traditional Court Registrar must have the qualifications and experience for that position, as prescribed.

(2) The role, functions and responsibilities of Provincial Registrars are as may be prescribed, in addition to the following:

- (a) Compiling and maintaining a prescribed register of all traditional courts in the province; 45
- (b) referring and reporting on cases of public interest, in the prescribed circumstances and prescribed manner, to the High Court having jurisdiction for review in order to contribute to jurisprudence or enhance the reform of customary law, and the High Court, for this purpose, has the powers as set out in section 11(2); 50
- (c) assisting parties in taking a matter on review as contemplated in section 11;
- (d) guiding and supervising the functioning of traditional courts; and
- (e) keeping the Member of the Executive Council responsible for traditional affairs informed about the functioning of the traditional courts in the province in question. 55

(2) Inkantolo yendabuko ingenza umyalelo othi noma ikuphi ukukhokhwa okukhulunywe ngakho esigatshaneni soku-(1) kumele kukhokhwe ngokugcwele noma kancane ngesikhathi.

(3) Inkantolo yendabuko ingakhipha umyalelo wokuthi noma ikuphi ukukhokhwa okukhulunywe ngakho esigatshaneni soku-(1) noma ingxenye yaso kukhokhwe kumuntu olinyazwe isenzo noma okweqiwa ukukhokhwa obekubekelwe khona, esimweni lapho umuntu onjalo, uma evuma ukukhokhelwa, engalethwa isenzo enkantolo ukuze kulungiswe umonakalo owenziwe ukulimala kwakhe. 5

Ukusetshenziswa kwemiyalelo yezinkantolo zendabuko

9. (1) Uma umyalelo okhishwe inkantolo yendabuko ungagcinwanga ngesikhathi esinqunywe yinkantolo yendabuko, uhlaka obelukhishelwe umyalelo, lungaletha udaba kumabhalane. 10

(2) Umabhalane kumele abuze noma enze kubuzwe, izizathu zokungalandeli umyalelo kanye nokunquma ukuthi ngabe ukungalandeli kungenxa yephutha yohlaka olukhishelwe umyalelo. 15

(3) Uma umabhalane ethole ukuthi ukungalandela umyalelo akungenxa yephutha lohlaka olukhishelwe umyalelo, kumele asize uhlaka ukuthi lulandele umyalelo ngemibandela okungavunyelwana ngazo phakathi kwezinhloko. 15

(4) (a) Uma umabhalane ethole ukungahambisani ngenxa yephutha lohlaka olukhishelwe umyalelo, kumele enze isinqumo salokho futhi emuva kwalokho adlulisele udaba kowezobulungiswa bokuthula oqokwe uNgqongqoshe ngokwemigomo yesigaba sesi-2 se-*Justices of the Peace and Commissioners of Oaths Act*, wezi-1963 (uMthetho 16 wezi-1963), ngezinhloso zaloMthetho, okumele abhekane nalolu daba ngokwamandla kanye nemisebenzi anganikwa yona noma athwese yona noma ngaphansi kwesigaba sesi-3 se-*Justices of the Peace and Commissioners of Oaths Act*, wezi-1963. 20

(b) Umsebenzi wobulungiswa bokuthula okukhulunywe ngabo esiqeshini (a) ukusiza ukulandelwa komyalelo owenziwe inkantolo yendabuko futhi ngale nhloso ubulungiswa bokuthula bunamandla alandelayo: 25

(i) Uma ukungalandelwa komyalelo kungenxa yengxenye yohlaka olukhishelwe umyalelo, amandla okuxoxisana nezinhloko ngokuthi ngabe uzolandelwa nini futhi kanjani umyalelo futhi ukunquma maqondana ngalokho; futhi 30

(ii) uma ukungalandelwa komyalelo kungenxa yenxenye yohlaka olukhishelwe umyalelo, amandla okubizela uhlaka lolo ukuthi luphinde luvele enkantolo yendabuko ukuze udaba luzodluliselwa eNkantolo kaMantshi enegunya, njengoba kushiwo esigabeni se-14(1)(a), ukuthi kubhekanwe nalo kabusha. 35

Ababhalisi beziNkantolo zeNdabuko esiFundazweni

10. (1) (a) Ezifundazweni lapho kunezinkantolo zendabuko uNgqongqoshe kumele, emuva kokuxoxisana neLungu leKhabhinethi eliphethe izindaba zomdabu, maqondana nemithetho ephethe imisebenzi yomphakathi, aqoke abantu abangabaBhalisi beziNkantolo zeNdabuko esiFundazweni maqondana nesifundazwe ngasinye. 40

(b) Umbhalisi weNkantolo yendabuko esiFundazweni kumele abe neziqu kanye nesipiliyoni kwaleso sikhundla, njengoba kunqunywe.

(2) Indima, imisebenzi kanye nemithwalo yabaBhalisi esiFundazweni kungaba njengoba kunqunywe; ukwengeza lena elandelayo:

(a) Ukuhlenganisa kanye nokugcina irejista enqunywe yazo zonke izinkantolo zendabuko esifundazweni; 45

(b) Ukudlulisa kanye nokubika izindaba zomphakathi, ezimweni ezinqunywe kanye nangendlela enqunywe, eNkantolo ePhakeme enegunya lokubuyekeza ukubamba iqhaza emthethweni noma ukwenza ngcono izinguquko zomthetho wesintu, futhi iNkantolo ePhakeme, ngale nhloso, inamandla njengoba kubekiwe esigabeni se-11(2); 50

(c) ukusiza izinhloko ukubuyekeza udaba njengoba kushiwo esigabeni se-11;

(d) ukuqondisa kanye nokuqapha ukusebenza kwezinkantolo zendabuko; kanye

(e) nokwazisa iLungu Eliphezulu eMkhandlwini elibhekene ngezindaba zomdabu ngokusebenza kwezinkantolo zendabuko okukhulunywe ngazo ezifundazweni. 55

(3) A Provincial Registrar shall, at all times, and for purposes of carrying out his or her role, functions, powers and responsibilities in terms of this section, have access to any traditional court within the province in question and to the records thereof.

(4) In this section “public interest” means an outcome which affects any right of the public, public finances or the public good.

5

Review by High Court

11. (1) A party to any proceedings in a traditional court may, in the prescribed manner and period, take those proceedings on review to a division of the High Court having jurisdiction on any of the following grounds:

- (a) The traditional court was not competent to deal with the matter as contemplated in section 4(2); 10
- (b) the traditional court was not properly constituted as contemplated in section 5;
- (c) the requirements relating to the pledge or affirmation contemplated in section 5 were not complied with;
- (d) the provisions of section 7(3)(a), affording— 15
 - (i) women, as parties to any proceedings or members of the traditional court, full and equal participation in the proceedings; or
 - (ii) vulnerable persons treatment that takes into account their particular vulnerability, were not complied with; 20
- (e) the provisions of section 7(3)(b) were not complied with;
- (f) one or both of the parties were not allowed to represent themselves or be represented by a person of their choice as contemplated in section 7(4);
- (g) the proceedings of the traditional court were not open to all members of the public, contrary to the provisions of section 7(6); 25
- (h) the proceedings of the traditional court were not conducted in the presence of both parties, contrary to the provisions of section 7(7);
- (i) the proceedings of the traditional court were conducted in a language which one or both of the parties did not understand without the intervention of an interpreter, contrary to the provisions of section 7(9) or (10); 30
- (j) an order was made contrary to the provisions of section 8;
- (k) a member of the traditional court participated in the proceedings of the court contrary to the provisions of section 7(12);
- (l) the provisions of section 3(3) have not been complied with or have been contravened; or 35
- (m) any procedural shortcoming relating to the conduct of the traditional court in the resolution of the dispute.

(2) (a) The division of the High Court reviewing the proceedings of a traditional court as contemplated in subsection (1) may, at any sitting thereof, hear any evidence and for that purpose summon any person to appear to give evidence or to produce any document or article. 40

(b) The division of the High Court reviewing the proceedings of a traditional court, whether or not it has heard evidence, may—

- (i) confirm, alter, set aside or correct the order made by the traditional court in terms of section 8; 45
- (ii) set aside or correct the proceedings of the traditional court;
- (iii) generally make such order as the traditional court ought to have made on any matter which was before it; or
- (iv) remit the case to the traditional court with instructions to deal with any matter in such manner as the division of the High Court may think fit. 50

(3) Any request for review as contemplated in subsection (1) after the expiry of the period determined in the regulations may be condoned by the division of the High Court in question on good cause shown.

(4) An order of a traditional court in respect of which the matter is taken on review in terms of this section, is suspended until the review has been decided on. 55

(5) At the conclusion of the matter before the traditional court, the traditional court must advise the parties of their right to take the matter on review and of the grounds for such review as contemplated in this section.

(3) UMBhalisi wesiFundazwe kumele, ngazo zonke izikhathi, kanye ngezinhloso zokudlala indima yakhe, imisebenzi, amandla kanye nemithwalo yakhe ngokwemigomo yalesi sigaba, iyakwazi ukuthola inkantolo yendabuko esesifundazweni okukhulunywe ngaso kanye namarekhodi ayo.

(4) Kulesi sigaba “izidingo zomphakathi” kusho umphumela othinta noma yiliphi ilungelo lomphakathi, ezezimali zomphakathi, noma impahla yomphakathi. 5

Ukubuyezwa yiNkantolo ePhakeme

11. (1) Uhlaka kunoma iliphi icala enkantolo yendabuko, ngendlela enqunyiwe futhi ngesikhathi esinqunyiwe, engathatha lawo macala ayobuyezwa egatsheni leNkantolo ePhakeme enegunya ngezizathu ezilandelayo: 10

- (a) Inkantolo yendabuko yayingafanele ukubhekana nodaba okukhulunywe ngalo esigabeni sesi-4(2);
- (b) inkantolo yendabuko ingaqalwanga ngokufanele njengoba kushiwo esigabeni sesi-5;
- (c) izimfuneko ezihambisana nesithembiso noma isiqinisekiso okukhulunywe ngakho esigabeni sesi-5 kungahanjiswananga naso; 15
- (d) imihlinzeko esigabeni sesi-7(3)(a), ekwazi—
 - (i) ukuvumela abantu besifazane, ukuthi babe yizinhlaka emacaleni noma babe ngamalungu enkantolo yendabuko, ukubamba iqhaza ngokugcwele futhi ngokulingana ecaleni; noma 20
 - (ii) ukuvumela abantu ababuthaka ukuthi indlela abaphathwa ngayo ifakwe emqondweni isimo sabo sokuba buthaka, kungahanjiswananga nakho;
- (e) imihlinzeko yesigaba sesi-7(3)(b) kungahanjiswananga nayo;
- (f) uhlangothi olulodwa noma izinhlangothi zombili bezingavunyelwe ukuthi zizimele noma zimelwe inoma imuphi umuntu ezimkhethayo njengoba kuhlangoziwe esigabeni sesi-7(4); 25
- (g) amacala enkantolo yendabuko kade engavulelekile kuwo wonke amalungu omphakathi, okuphikisana nemihlinzeko yesigaba sesi-7(6);
- (h) amacala enkantolo yendabuko ayenziwa zingekho izinhlaka zombili, okuphikisana nemihlinzeko yesigaba sesi-7(7); 30
- (i) amacala enkantolo yendabuko ayenziwa ngolimi uhlaka noma izinhlaka zombili ezazingaluzwa engekho notolika, okuphikisana nemihlinzeko yesigaba sesi-7(9) noma se-(10);
- (j) umyalelo wenziwa ngokuphikisana nemihlinzeko yesigaba sesi-8;
- (k) ilungu lenkantolo yendabuko libambe iqhaza ekuqhutshweni kwamacala enkantolo ngokuphambene nemihlinzeko yesigaba sesi-7(12); 35
- (l) imihlinzeko yesigaba sesi-3(3) ingalandelwanga noma yaphuliwe; noma
- (m) yikuphi ukungasebenzi kahle kwenqubo maqondana nokuziphatha kwenkantolo yendabuko ekuxazululeni ingxabano.

(2) (a) Igatsha leNkantolo ePhakeme elibuyezwa amacala enkantolo yendabuko njengoba kushiwo esigatshaneni soku-(1), kunoma yikuphi ukulalelwa kwecala, lingezwa ubufakazi kanye nangaleyo nhloso abize noma imuphi umuntu ukuthi avele ukunikela ngobufakazi noma akhiphe noma imuphi umqulu noma into. 40

(b) Igatsha leNkantolo ePhakeme elibuyezwa amacala asenkantolo yendabuko, noma ngabe libuzwile noma cha ubufakazi— 45

- (i) lingaqinisekisa, lingashintsha, lingabeka eceleni noma lilungise umyalelo owenziwe inkantolo yendabuko ngokwemigomo yesigaba sesi-8;
- (ii) lingabeka eceleni noma lingalungisa amacala enkantolo yendabuko;
- (iii) ngokujwayelekile lingenza umyalelo onjalo njengokuba inkantolo yendabuko ingenza kunoma iluphi udaba olulethwe kuyo; noma 50
- (iv) lingamukela icala enkantolo yendabuko nemiyalelo yokubhekana nanoma yiluphi udaba ngendlela enjalo njengoba igatsha leNkantolo ePhakeme icabanga ukuthi ilungile.

(3) Noma isiphi isicelo sokubuyezwa njengokuba kushiwo esigatshaneni soku-(1) emuva kosuku lokuphela kwesikhathi esinqunyiwe kumithetho-zinqumo singavunwa yigatsha leNkantolo ePhakeme okukhulunywe ngalo ngesizathu esilungile esiveziwe. 55

(4) Umyalelo wenkantolo yendabuko maqondana nodaba olubuyezwayo ngokwemigomo yalesi siqephu, uzomiswa kuze kube kuthathwa isinqumo sokubuyezwa.

(5) Ekuphethweni kodaba olusenkantolo yendabuko, inkantolo yendabuko kumele iyale izinhlaka ngelungelo lazo lokuthatha udaba lokubuyezwa kanye nangezizathu zokubuyezwa okunjalo okukhulunywe ngakho kulesi sigaba. 60

Referral of matters from traditional courts to Magistrates' Courts

12. (1) A party who is aggrieved by a decision or order of a traditional court on grounds other than those referred to in section 11(1) may, after exhausting all traditional court system appeal procedures available in terms of customary law as contemplated in section 6(3), refer that decision or order to the Magistrate's Court having jurisdiction, in the prescribed manner and period. 5

(2) A Magistrate's Court to which a matter has been referred in terms of subsection (1), may—

- (a) hear any evidence and, for that purpose, may summon any person to appear to give evidence or to produce any document or article; and 10
- (b) give any order or decision it deems competent to give in the matter.

Record of proceedings

13. (1) A traditional court must, in the prescribed manner, record or cause to be recorded in the language contemplated in section 7(9)— 15

- (a) a file number of the dispute; 15
- (b) the date on which the dispute was dealt with;
- (c) the nature of the dispute;
- (d) a summary of the facts of the dispute;
- (e) the names and addresses of the parties and their witnesses;
- (f) the decision of the traditional court, including the decision or order of the traditional court; 20
- (g) a list of exhibits; and
- (h) an indication that the prescribed pledge or affirmation was taken by the traditional leader presiding over the session of the traditional court or by a person designated by him or her in accordance with customary law, as contemplated in section 5(5). 25

(2) The record contemplated in subsection (1) must be accessible to the public under the supervision of the clerk of the traditional court at convenient times, as prescribed.

Transfer of disputes

14. (1) (a) If a traditional court is of the opinion that a dispute before it is not a matter which it is competent to deal with, as contemplated in section 4, or if the matter involves difficult or complex questions of law or fact that should be dealt with in a Magistrate's Court or a small claims court or if it is a matter as contemplated in section 4(4)(b)(ii) or section 9(4)(b)(ii), the traditional court may, in the prescribed manner, transfer such dispute to the Magistrate's Court or small claims court having jurisdiction and notify the parties to the dispute of the transfer. 30 35

(b) If proceedings are transferred from a traditional court to a Magistrate's Court in terms of this section, the Magistrate's Court must commence proceedings afresh.

(2) If a prosecutor, in the case of a criminal matter, before an accused person has pleaded to a charge as contemplated in section 6(a) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or a magistrate or a commissioner of a small claims court, in the case of a civil matter before him or her, is of the opinion that a dispute before him or her— 40

- (a) in the case of a dispute of a civil nature— 45
 - (i) is a matter that can be dealt with more appropriately in terms of customary law in a traditional court; and
 - (ii) is a matter in respect of which a traditional court has jurisdiction, as contemplated in this Act; or
- (b) in the case of a dispute of a criminal nature, is a matter in respect of which a traditional court has jurisdiction, as contemplated in this Act, 50

Ukudluliswa kwamacala asuka ezinkantolo zendabuko ayiswe eZinkantolo Zezimantshi

12. (1) Uhlaka olunesikhalo ngesinqumo noma umyalelo wenkantolo yendabuko, ngezizathu ngaphandle kwalezi okukhulunywe ngazo esigabeni se-11(1), ngemva kokusebenzisa zonke izinqubo ezikhona zenkantolo yendabuko zokudlulisa isikhalo ngokomthetho wesintu njengoba kuhlangezwe esigabeni sesi-6(3), lungadlulisela lesi sinqumo noma umyalelo eNkantolo yeMantshi enegunya lokuphatha, ngendlela nangesikhathi esinqunyiwe. 5

(2) INkantolo Yemantshi maqondana nodaba oludluliselwe kuyo ngokwesigatshana soku-(1)— 10

- (a) ingezwa noma yibuphi ubufakazi futhi, ngaleyo njongo, ingabiza noma yimuphi umuntu ukuba avele ukuzonikeza ubufakazi noma akhiphe noma yimuphi umbhalo noma i-athikili; futhi
- (b) inikeze noma yimuphi umyalo noma isinqumo esibona sifanelekile ukusinikeza odabeni. 15

Irekhodi lamacala

13. (1) Inkantolo yendabuko kumele, ngendlela enqunyiwe, irekhode noma isizathu sirekhodwe ngolimi okukhulunywe ngalo esigabeni sesi-7(9)—

- (a) inombolo yefayela lombango;
- (b) usuku lapho umbango kwakubhekenwe nawo; 20
- (c) uhlobo lombango;
- (d) ukufingqwa kwamaqiniso ombango;
- (e) amagama kanye namakheli ezinhlaka kanye nofakazi;
- (f) isinqumo senkantolo yendabuko, okufaka phakathi isinqumo noma umyalelo wenkantolo yendabuko; 25
- (g) uhla lwemibukiso; kanye
- (h) nenkomba yokuthi isibambiso esinqunyiwe noma isiqinisekiso sithathwe ngumholi wendabuko owengamele iseshini yenkantolo yendabuko noma umuntu oqokwe nguye ngokuhambisana nomthetho wesintu, njengokuba kushiwo esigabeni sesi-5(5). 30

(2) Irekhodi okukhulunywe ngalo esigatshaneni soku-(1) kumele umphakathi ukwazi ukufinyelela kulo, lolo hlelo kufanele luqashwe umabhalane wenkantolo yendabuko ngezikhathi ezifanele, njengoba kunqunyiwe.

Ukudluliswa kwemibango

14. (1) (a) Uma inkantolo yendabuko inombono wokuthi umbango ebhekene nawo akulona udaba olufanele ukuthi kubhekanwe nalo, njengoba kushiwo esigabeni sesi-4, noma uma udaba lunemibuzo enzima yomthetho noma ukuthi kumele kubhekanwe nalo enkantolo kamantshi noma enkantolo yamacala amancane noma uma kuwudaba okukhulunywe ngalo esigabeni sesi-4(4)(b)(ii) noma isigaba sesi-9(4)(b)(ii), inkantolo yendabuko, ngendlela enqunyiwe, ingadlulisela umbango onjalo enkantolo kamantshi noma enkantolo yamacala amancane enegunya futhi yazise izinhlaka ngombango kanye nangokwedluliswa kwayo. 35

(b) Uma amacala adluliswe ukusuka enkantolo yendabuko eya eNkantolo kaMantshi ngokwemigomo yalesi sigaba, iNkantolo kaMantshi kumele iqale kabusha amacala.

(2) Uma umshushisi, ecaleni lobugebengu, ngaphambi kokuthi ummangalelwa elivume icala njengokuba kushiwo esigabeni sesi-6(a) se-Criminal Procedure Act, wezi-1977 (uMthetho 51 wezi-1977), noma imantshi noma ukhomishana wenkantolo yamacala amancane, mayelana nodaba abhekene nalo, unombono ukuthi umbango abhekene nawo— 45

- (a) uma kwenzeka ukuthi umbango— 50
 - (i) udaba okungabhekanwa nalo kahle ngokwemigomo yomthetho wesintu enkantolo yendabuko; kanye
 - (ii) nodaba olumaqondana nenkantolo yendabuko enegunya, njengokuba kushiwo kulo Mthetho; noma
- (b) odabeni lombango wobugebengu, udaba oluqondene nenkantolo yendabuko enegunya, njengokuba kushiwo kulo Mthetho, 55

the prosecutor, magistrate or commissioner of a small claims court, as the case may be, may facilitate the transfer of the dispute to the traditional court and notify the parties to the dispute of the transfer.

Limitation of liability of members of traditional courts

15. A member of a traditional court is not liable for anything done or omitted in good faith— 5
- (a) in the performance of any function under this Act; or
 - (b) in the exercise of any power under this Act.

Code of conduct and enforcement thereof

16. (1) (a) The Minister, after consultation with the Cabinet member responsible for traditional affairs and after consultation with the National House of Traditional Leaders, must compile a code of conduct for all persons who have a role in terms of customary law for the effective functioning of traditional courts, including persons who facilitate sessions of a traditional court on behalf of traditional leaders, clerks of traditional courts and interpreters, which must be submitted to Parliament for approval 60 days prior to publication thereof in the *Gazette*. 10 15

(b) If the code of conduct is not approved within the 60 day-period referred to in paragraph (a), it shall be deemed to have been approved by Parliament.

(2) The code must be reviewed at least once in every three years by the Minister, after consultation with the Minister responsible for traditional affairs and the National House of Traditional Leaders, and the result of such review, including any proposed amendment to the code must be tabled in Parliament for approval as contemplated in subsection (1). 20

(3) The code serves as the prevailing standard of conduct which must be adhered to by the persons contemplated in subsection (1). 25

(4) The code and every subsequent amendment must be published in the *Gazette*.

(5) (a) Any breach of a provision of the Code must be reported, in the prescribed manner, to the member of the executive council responsible for traditional affairs in the province in question, which must cause the alleged breach to be investigated.

(b) Any investigation in terms of paragraph (a) must be in accordance with the rules of natural justice, after following due process. 30

(6) Any one or a combination of the following remedial steps may be imposed by the member of the executive council in question in respect of a member of the traditional court who is found to have breached a provision of the Code:

- (a) Apologising to the complainant, in a manner specified; 35
- (b) a reprimand;
- (c) a written warning;
- (d) any form of compensation;
- (e) appropriate counselling;
- (f) attendance of a specific training course; 40
- (g) being relieved of the role in the traditional court for the duration of his or her rehabilitation; or
- (h) any other appropriate corrective measure.

Regulations

17. (1) The Minister must make regulations regarding the following: 45
- (a) The role and responsibilities of clerks as contemplated in section 5(4);
 - (b) the pledge to be said or affirmation to be made by the traditional leader presiding over the traditional court or the person designated by him or her in accordance with customary law as contemplated in section 5(5);

umshushisi, imantshi noma ikhomishana yenkantolo yamacala amancane, ngokodaba, bengasiza ukudlulisela umbango enkantolo yendabuko futhi bazise izinhlaka ngokudluliswa kombango.

Umkhawulo wenhlawulo yamalungu ezinkantolo zendabuko

15. Ilungu lenkantolo yendabuko akumele lihlawuliswe ngenxa yanoma yini eyenziwe noma eyeqiwe ngenhloso elungile— 5

- (a) ngokwenziwa kwanoma yimiphi imisebenzi ngaphansi kwalo Mthetho; noma
- (b) ekusetshenzisweni kwanoma imaphi amandla ngaphansi kwalo Mthetho.

Isivumelwano sokuziphatha nokusetshenziswa

16. (1) (a) UNgqongqoshe, emva kokuxoxisana nelungu leKhabhinethi eliphethe izindaba zendabuko futhi emuva kokuxoxisana neNdlu yabaHloli beNdabuko kuZwelonke, kumele ahlanganise isivumelwano sokuziphatha sabo bonke ababambe iqhaza ngokwemigomo yomthetho wesintu ukuze izinkantolo zendabuko zisebenze kahle, okufaka phakathi abantu abasiza ngamaseshini enkantolo yendabuko abamele abahloli bendabuko, omabhalane bezinkantolo zendabuko kanye notolika, okumele sihanjiswe ePhalamende ukuthi sivunyelwe ezinsukwini ezingama-60 ngaphambi kokushicilelwa kwaso kuSomqulu. 10 15

(b) Uma izivumelwano sokuziphatha singavunyelwanga ezinsukwini ezingama-60 okukhulunywe ngazo esiqeshini (a), kumele kuthathwe ngokuthi sivunyelwe iPhalamende. 20

(2) Isivumelwano kumele sibuyekwe uNgqongqoshe okungenani kanye eminyakeni emithathu, emva kokuxoxisana noNgqongqoshe ophethe izindaba zendabuko kanye neNdlu yabaHloli beNdabuko kuZwelonke, futhi umphumela walokho kubuyekwe, okufaka phakathi ukuchibiyela okuhlongoziwe esivumelwaneni kumele kubekwe phambi kwePhalamende ukuze kuvunyelwe njengokuba kushiwo esigabeni soku-(1). 25

(3) Isivumelwano sisebenza ezingeni elijwayelekile sokuziphatha kumele kuhlanganise abantu okukhulunywe ngabo esigatshaneni soku-(1).

(4) Isivumelwano kanye nokuchibiyela okulandelayo kumele kushicilelwe kuSomqulu. 30

(5) (a) Noma yikuphi ukwephulwa kweSivumelwano kumele kubikwe, ngendlela enqunyiwe, elungeni lomkhandlu eliphezulu eliphethe izindaba zendabuko esifundazweni okukhulunywe ngaso, elingenza ukuthi kuphenywe ngalokho kusolakala kokwephulwa kwesivumelwano.

(b) Noma iluphi ucwaningo ngokwemigomo yesiqephu (a) kumele luhambisane nemithetho yobulungiswa bemvelo, emuva kokulindela uhlelo olufanele. 35

(6) Noma ubani noma inhlanganisela yamagxathu okusiza alandelayo engaphoqelelwa ilungu lomkhandlu eliphezulu okukhulunywe ngalo maqondana nelungu lenkantolo yendabuko elitholakale ukuthi laphule umhlinzeko wesiVumelwano:

- (a) Ukuxolisa kummangali, ngendlela ethile eshiwo; 40
- (b) isijeziso;
- (c) isexwayiso esibhaliwe;
- (d) noma yiluphi uhlobo lwesinxephezelo;
- (e) ukwelulekwa okufanele;
- (f) ukuthola ukuqeqeshelwa ngesifundo esithile; 45
- (g) ukukhululwa kwindima eliyidlalayo enkantolo yendabuko ngesikhathi lisahlengwa; noma
- (h) iyiphi enye indlela yokujezisa efanele.

Imithethozimiso

17. (1) UNgqongqoshe kumele enze imithethozimiso maqondana nalokho okulandelayo: 50

- (a) Iqhaza kanye nemisebenzi kamabhalane njengokuba kushiwo esigabeni sesi-5(4);
- (b) isithembiso esizoshiwo noma isiqinisekiso okumele kwenziwe ngumholi wendabuko owengamele inkantolo yendabuko noma umuntu oqokwe wuye maqondana nomthetho wesintu kanye nemikhuba yawo okukhulunywe ngakho esigabeni sesi-5(5); 55

- (c) the qualifications and experience required to be appointed or designated as a Provincial Registrar as contemplated in section 10(1)(b);
 - (d) the register to be kept by Provincial Registrars of Traditional Courts of all traditional courts as contemplated in section 10(2)(a);
 - (e) the manner and circumstances in which Provincial Registrars of Traditional Courts may refer matters on review, as contemplated in section 10(2)(b); 5
 - (f) the time period and manner for taking proceedings of a traditional court on review to the High Court, as contemplated in section 11(1);
 - (g) the time period and manner orders or decisions of a traditional court may be referred to a Magistrate's Court, as contemplated in section 12(1); 10
 - (h) the manner in which the records of proceedings of traditional courts must be dealt with, as contemplated in section 13;
 - (i) the manner in which a matter may be transferred from a traditional court to a Magistrate's Court or small claims court, as contemplated in section 14(1);
 - (j) the manner in which to report alleged breaches of the code of conduct, as contemplated in section 16(5)(a); 15
 - (k) the training of traditional leaders and persons designated by traditional leaders to preside over traditional courts;
 - (l) the involvement and training of paralegals and interns in the functioning of traditional courts; and 20
 - (m) any other matter which is necessary or expedient to prescribe in order to give effect to this Act.
- (2) Any regulation envisaged under this section must be—
- (a) made after consultation with the Cabinet member responsible for traditional affairs, the Members of Executive Councils of provinces responsible for traditional affairs and the National House of Traditional and Khoi-San Leaders; and 25
 - (b) submitted to Parliament for approval.

Transitional provisions and repeal of laws

18. (1) The following Acts, if they have not been repealed before the commencement of this Act, are hereby repealed: 30
- (a) The Regional Authorities Courts Act, 1982 (Act No. 13 of 1982) (Transkei); and
 - (b) the Chiefs Courts Act, 1983 (Act No. 6 of 1983) (Transkei).
- (2) (a) Any authorisation by the Minister under section 12 of the Black Administration Act, 1927 (Act No. 38 of 1927), to hear and determine certain civil claims, any conferment of power by the Minister under section 20 of the Black Administration Act, 1927, to try certain criminal offences, and any other similar authorisation or conferment of power under any other law is of no force and lapses upon the commencement of this Act and the provisions of this Act apply. 35 40
- (b) Sections 12 and 20 of the Black Administration Act, 1927, are hereby repealed.
- (3) Any proceedings pending before a traditional court at the commencement of this Act must be continued and concluded as if this Act had not been passed.

Short title and commencement

19. This Act is called the Traditional Courts Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 45

- (c) iziqu kanye nesipiliyoni esifunekayo ukuze uqokwe njengoMbhali si wesiFundazwe njengokuba kushiwo esigabeni se-10(1)(b);
- (d) irejista ezogcinwa ababhalisi beziFundazwe beziNkantolo zeNdabuko bazo zonke izinkantolo zendabuko njengokuba kushiwo esigabeni se-10(2)(a);
- (e) indlela kanye nezimo lapho ababhalisi beziFundazwe beziNkantolo zeNdabuko bengadlulisela izindaba ukuthi zibuyekwezwe, njengokuba kushiwo esigabeni se-10(2)(b); 5
- (f) isikhathi kanye nendlela yokuthatha amacala ezinkantolo zendabuko ukuthi ayobuyekwezwe eNkantolo ePhakeme, njengoba kushiwo esigabeni se-11(1);
- (g) isikhathi kanye nendlela imiyalelo noma izinqumo zenkantolo yendabuko ezingadluliselwa ngayo eNkantolo Yemantshi, njengoba kukhulunywe ngakho esigabeni se-12(1); 10
- (h) indlela amarekhodi amacala ezinkantolo zendabuko okumele kubhekanwe nawo ngayo, njengokuba kushiwo esigabeni se-13;
- (i) indlela udaba olungadluliswa ngayo ukusuka enkantolo yendabuko luya eNkantolo kaMantshi noma inkantolo yamacala amancane, njengokuba kushiwo esigabeni se-14(1); 15
- (j) indlela umbiko wokusolakala kokwephulwa kwesivumelwano sokuziphatha, njengokuba kushiwo esigabeni se-16(5)(a);
- (k) ukuqeqeshwa kwabaholi bendabuko kanye nabantu abaqokwe abaholi bendabuko ukuthi bengamele izinkantolo zendabuko; 20
- (l) ukubandakanyeka kanye nokuqeqeshwa kwabezomthetho kanye nabafundi abasaqeqeshwayo ekusebenzeni kwezinkantolo zendabuko; kanye
- (m) noma yiluphi olunye udaba olufanele noma olufanelekile ukuthi lunqunywe ukuze luzoqalisa ukusebenza kwalo Mthetho. 25
- (2) Noma imuphi umthetho-nqubo oboniwe ngaphansi kwalesi sigaba kumele—
- (a) wenziwe ngemuva kokuxoxisana nelungu leKhabhinethi elibhekene nezindaba zendabuko, Amalungu eMikhandlu aPhezulu ezifundazwe abhekene nezindaba zendabuko kanye neNdlu yabaHloli beNdabuko nama Khoi-San kuZwelonke; futhi 30
- (b) ihanjiswe ePhalamende ukuze ivunyelwe.

Ukushintsha kwemihlinzeko kanye nokuchithwa kwemithetho

18. (1) IMithetho elandelayo, uma ingakachithwa ngaphambi kokuqaliswa kwaloMthetho, iyachithwa lapha:
- (a) i*Regional Authorities Courts Act*, 1982 (uMthetho Nom. 13 wezi-1982) (Transkei); kanye 35
- (b) ne-*Chiefs Courts Act*, 1983 (uMthetho Nom. 6 wezi-1983) (Transkei).
- (2)(a) Noma yikuphi ukuvumela okwenziwa uNgqongqoshe ngaphansi kwesigaba se-12 se*Black Administration Act*, 1927 (uMthetho Nom. 38 wezi-1927), ukuzwa kanye nokunquma ngamacala athile womphakathi, kanye nokuvumela okufanayo noma ukunikwa kwamandla ngaphansi kwesigaba sama-20 se-*Black Administration Act*, 1927, ukuze kuqinisekiswa amacala athile obugebengu, kwanoma yimuphi umthetho awuphoqelesi futhi uphelelwa yisikhathi ekuqalisweni kwaloMthetho kanye nemihlinzeko yaloMthetho iyasebenza. 40
- (b) Izigaba ze-12 kanye nesama-20 zoMthetho Wokuphatha Abantu Abamnyama, 1927, ziyachithwa. 45
- (3) Noma yikuphi ukuqulwa kwecala okusalindile enkantolo yendabuko ngesikhathi kuqaliswa ukusebenza kwalo Mthetho kufanele kuqhutshekwe futhi kuthathwe engathi lo Mthetho awukakaphasiswa. 50

Isihloko esifushane kanye nokuqala ukusebenza

19. Lo Mthetho ubizwa ngoMthetho weziNkantolo zeNdabuko, 2022, futhi uzoqala ukusebenza ngosuku oluzokwenziwa uMongameli ngesimemezelo kuSomqulu.

Schedule 1**PROHIBITED CONDUCT WHICH INFRINGES ON THE DIGNITY,
EQUALITY AND FREEDOM OF PERSONS**

(Section 3(3))

- Conduct of any nature which tends to— 5
- (a) discriminate against the dignity of members of the Lesbian, Gay, Bisexual, Transgender and Intersexed community;
 - (b) promote homophobia;
 - (c) denigrate, or discriminate against, elderly persons who suffer from mental health conditions such as memory loss, dementia and Alzheimer's disease; 10
 - (d) discriminate against persons who are mentally or physically infirm or disabled on the basis of existing perceptions or beliefs;
 - (e) discriminate against persons with albinism; and
 - (f) discriminate against unmarried persons.

Isheduli yoku-1**INDLELA YOKUZIPHATHA EYENQATSHELWE EYAPHULA ISITHUNZI,
UKULINGANA KANYE NENKULULEKO KWABANTU**

(Isigaba sesi-3(3))

| | |
|--|----|
| Ukuziphatha kwanoma iyiphi indlela— | 5 |
| (a) okucwasa isithunzi samalungu omphakathi wezitabane, ubulilimbili, ababulili babo buphambene nobokuzalwa kanye nababulili babo akubona abesilisa futhi akubona obesifazane; | |
| (b) ukugqugquzela ukucwasa izitabane; | |
| (c) ukululaza, noma ukucwasa, abantu abadala abanesifo sengqondo njengesokukhohlwa kanye nokuwohloka kwengqondo; | 10 |
| (d) ukucwasa abantu abakhubazeke noma abangaphilile kahle ngokwengqondo ngokwezinkolelo ezikhona; | |
| (e) ukucwaswa kwabantu bebala elimhlophe; kanye | |
| (f) nokucwaswa kwabantu abangashadile. | 15 |

Schedule 2

(Section 4(2)(a))

Matters which traditional courts are competent to deal with in terms of this Act:

- (a) Theft where the amount involved does not exceed R15 000-00.
- (b) Malicious damage to property where the amount involved does not exceed R15 000-00. 5
- (c) Assault where grievous bodily harm is not inflicted.
- (d) Breaking or entering any premises with intent to commit an offence either at common law or in contravention of any statute where the amount involved does not exceed R15 000-00. 10
- (e) Receiving any stolen property knowing it to be stolen where the amount involved does not exceed R15 000-00.
- (f) Crimen injuria.
- (g) Advice relating to customary law practices in respect of— 15
 - (i) ukuThwala;
 - (ii) initiation;
 - (iii) customary law marriages;
 - (iv) custody and guardianship of minor or dependent children;
 - (v) succession and inheritance; and
 - (vi) customary law benefits. 20
- (h) Any matter arising out of customary law and custom where the claim or the value of the property in dispute does not exceed the amount determined by the Minister from time to time by notice in the *Gazette* and different amounts may be determined in respect of different categories of disputes.
- (i) Altercations between members of the community. 25

Isheduli yesi-2

(Isigaba sesi-4(2)(a))

Izindaba izinkantolo zendabuko ezikwaziyo ukubhekana nazo ngokwemigomo yaloMthetho:

- (a) Ukuntshontsha lapho inani lemali ebandakanyekayo ayidluli imali engange-R15 000-00. 5
- (b) Ukulimazeka kwempahla okunonya lapho imali ebandakanyekayo ayidluli inani lemali engange-R 15 000-00.
- (c) Ukulimaza lapho kungalinyazanwanga kakhulu.
- (d) Ukugqokeza noma ukungena emagekeni ngenhloso yokwenza isenzo sobugebengu okungaba okomthetho owejwayelekile noma ukuphambana nanoma imuphi umthetho lapho imali ebandakanyekayo ingadluli inani lemali engange-R15 000-00. 10
- (e) Ukwemukela noma iyiphi impahla eyebiwe wazi ukuthi yebiwe lapho imali ebandakanyekayo ingadluli inani lemali engange-R15 000-00. 15
- (f) Ukulinyazwa kwesithunzi somuntu.
- (g) Iseluleko esihambisana nomthetho wesintu maqondana—
 - (i) nokuThwala;
 - (ii) ukuSoka;
 - (iii) imishado yomthetho wesintu; 20
 - (iv) ukugcina kanye nokugada kwabantwana abancane noma abangakwazi ukuzimela;
 - (v) Amafa; kanye
 - (vi) nenzuzo yomthetho wesintu.
- (h) Noma yiluphi udaba oluphakanyiswa umthetho wesintu noma umkhuba wawo lapho isicelo noma inani lempahla yombango ingadluli imali enqunywe uNgqongqoshe ngesikhathi ngesaziso kuSomqulu kanye namanani ahlukene anganqunywa maqondana nezinhlobo ezahlukene zemibango. 25
- (i) Izingxabano phakathi kwamalungu omphakathi.

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