

The role and importance of the institution of traditional leadership in local government affairs

13.1 Introduction

During the overall restructuring and transformation of the South African constitutional dispensation, strong arguments were forwarded to include and protect the institution of traditional leadership and traditional law (also known as customary law). Following various discussions and consultations, both the interim Constitution of 1993 and the final Constitution of 1996 have made provision for the recognition and the role of traditional leaders.¹

Although constitutionally recognised and protected, the exact role and involvement of traditional leaders and their participation in the three spheres of government, especially in local government, are unclear and have already caused some conflicts between traditional leaders and government structures.² In order to address some of these disputes and to clarify the position, national government has embarked on a process of investigation and consultation, with a final objective being to rationalise legislation and implement new policies pertaining to the role and participation of traditional leaders in official governmental structures.³ From an African, and more

¹ See the interim Constitution of 1993 ch 11 and the Constitution ss 211 and 212.

² Refer to *Contralesa v Minister of Local Government*, EC 1996 (2) SA 898 (TkS). In this case the applicant's essential complaint was that the application of the LGTA to rural areas in the Eastern Cape would deprive traditional leaders of their powers. The court disagreed with the argument and held that the applicant did not have *locus standi* to bring the particular application. See para E-G at 905. See also *ANC v Minister of Local Government and Housing KZN* 1998 (3) SA 1 (CC), where the court held that transition to democratic local government was to take place in terms of the LGTA, which recognised that in the interim phase of transition, areas over which traditional leaders had had authority could be included within the areas of jurisdiction of elected local authorities. This had given rise to a potential tension between democratic local government and traditional leaders in the interim Constitution had sought to resolve this tension in part through the mechanism of s 182. See para A-C at 12.

³ See the draft discussions document: *Towards a White Paper on Traditional Leadership and institutions: a publication of the department of Provincial and Local Government* April 2000 Pretoria.

specifically a South African perspective, it would be irresponsible and unfortunate if the importance of traditional leadership and traditional law were to be overshadowed by political short-sightedness or the failure to provide for their proper recognition and inclusion. This importance is particularly relevant in the new local government structures, where traditional leaders could have significant influence over their local communities. In order to understand the role and importance of the institution of traditional leadership, it is necessary to examine briefly the historical background of such institutions, and thereafter to evaluate the current legislative protection given to such institutions in the new governmental structure.

13.2 A brief historical overview of traditional leadership in South Africa

Traditional leadership is an institution that has developed over hundreds, if not thousands, of years in Africa. Prior to the introduction of colonialism, social organisation in South Africa was characterised by many tribal regimes that existed and operated within certain areas of jurisdiction. Such tribal regimes were primarily based on the principles of patriarchy and inscriptive norms. Each tribe was led by a particular traditional or tribal leader, who was the central figure in that tribe.⁴ The tribal leader or traditional leader was further vested with the highest authority in a particular territory. He had various functions, which he did not exercise as an autonomous individual but rather in collaboration with a so-called “tribal council”, which was representative of the ordinary people of that tribe. The traditional leader played a very important role within tribal customs. He was seen not only as a link between the people of the tribe and their ancestors, but also as a spiritual, cultural and judicial leader and the custodian of the values of his community. The traditional leader was often regarded as the co-ordinator of many aspects of everyday life of his people, the curator of community dreams and aspirations and the protector of harmony between the members of his community in respect of their natural, spiritual, social, physical and economical environment. The traditional leader had the final authority to rule over his tribe, and he was considered by that tribe to be functioning in the role of both father and son.⁵ Often his leadership and traditional authority served as a bonding factor for the community, as he was responsible for the common good of all.

⁴ This is still applicable today.

⁵ He was father to his people and son of the ancestors of his people.

Traditional leaders ruled over their tribes in accordance with the principles of African democracy and accountability. Their reign was similar to that of a king in council.⁶

With the dawn of colonialism in Africa, the traditional African government was systematically weakened, and the strong and influential bond between traditional leaders and their tribe members was gradually eroded. Many African people were displaced and were evicted from their properties, which in turn caused severance between tribal members and tribal leadership. Another factor which also impacted severely on the tribal relationship, especially between members and leadership, was the rise of urbanisation. Many people, mostly men, left their tribal villages for bigger cities in a quest for work and ultimately a better life.⁷ Under colonial rule in South Africa and later National Party domination, new legislation increasingly strengthened tribal divisions and provided traditional leaders with powers and roles they had not possessed before. The institution of traditional leadership was sidetracked to a form of indirect government. General governmental affairs vested in the ruling government of the day, while traditional authorities had control over only predefined traditional or customary affairs.⁸ In essence, the laws mentioned above created a system of local self-government which placed traditional leaders in a bureaucratic role. Chieftainship became reduced to a public office which was a mere creature of statute and which made the appointment, suspension or removal of chiefs subject to political manipulation.⁹

13.3 Important considerations relating to traditional leadership from a South African perspective

In order to understand the importance and special role traditional authorities can and should play within government structures, some important considerations should be noted, as outlined below.

⁶ See the draft discussion document on Traditional Leadership and Institutions (2000) at 10 hereafter referred to as the discussion document on Traditional Leadership. The principles of African democracy are of significant importance to the South African legal system. For more on this see *S v Makwanyane and Another* 1995 (3) SA 391 (CC).

⁷ It is submitted that not only the colonial policies but also modern urbanisation trends combined caused ancient Southern African societies to be disrupted.

⁸ See, eg, the Black Administration Act 38 of 1927, the Black Authorities Act 68 of 1951 and various pieces of legislation of black independent states or self-governing territories.

⁹ See the discussion document at 11 and 13. It is safe to say that the successive colonial and later NP governments eroded Traditional Leadership as an institution and compromised its traditional values within the African concept. Although modern South Africa cannot go back to pre-colonial times, there are still definite advantages for the institution of Traditional Leadership in the 21st century South Africa.

13.3.1 *The structure of traditional leadership*

Originally traditional leadership was rooted in the notion of a kingship or kingdom. During colonial rule a tendency developed to refer to African rulers as chiefs rather than kings. This tendency obscured the hierarchy of leadership that existed in pre-developed African communities and led to the demise of the formerly strong traditional practices and customs. History indicates that the king in the African context was in principle not an autocrat. He ruled by popular mandate and took decisions after consultation with his councillors.¹⁰ The king's council comprised the headmen and elders, who were normally notable leaders in the respective communities.¹¹ With the introduction of various legislative reforms, most notably the Black Administration Act,¹² the African system of governance was changed and transformed, and new structures were put in place of old ones.¹³ Under the Union of South Africa, the Governor-General became something of a supreme chief over all tribal entities, which position gave him the power to create and divide tribes and to appoint or dismiss any person he wished as a chief or headman. In 1961 this role of "supreme chief" was assumed by the president of the Republic of South Africa.¹⁴

13.3.2 *The appointment/recognition of traditional leaders*

According to customary law, the appointment or recognition of a traditional leader was done mostly through various laws of succession. In principle there were strong hereditary customs along only male lines.¹⁵ In modern South Africa there are many sets of legislation and procedures that are still applicable and used by the different provincial authorities to appoint traditional leaders to different positions of power.¹⁶ As was stated above, the original power to appoint traditional leaders, which was vested in the supreme chieftaincy, was later assigned to the Governor-General by the Black Administration Act and reassigned to the President of South Africa in 1961

¹⁰ However, there are certain kings that acted autocratically and ruled as dictators.

¹¹ Headmen were usually members of the extended royal family and were each assigned a section of the tribe to rule on behalf of and with the assistance of the king. The royal family thus extended its power vertically and horizontally. The concept of democratic elections was foreign to a system of traditional rule.

¹² 38 of 1927.

¹³ See, eg, the tribal authorities in the former Qwaqwa.

¹⁴ Under the 1993 and 1996 Constitutions, these powers were assigned to the premiers of the nine provinces. See the discussion document on Traditional Leadership at 14.

¹⁵ Females were appointed as regents for their male sons until they have reached the age of maturity. These practices are still followed today. See the discussion document at 25.

and lastly to the homeland governments upon their attainment of self-governing status and to the TBVC states upon receiving independence. Outside self-governing territories and TBVC states, traditional leaders were still being appointed by the South African president. It is commonly accepted that a traditional leader begins his term of office upon official appointment, which is then followed by a customary inauguration.¹⁷ During 1994, under the IC, the power to appoint traditional leaders was assigned to the relevant premiers of six provinces in South Africa, where the institution of traditional leadership was relevant.¹⁸

Three institutions play a role in the appointment of a traditional leader:

- the customary institutions, which are normally the various royal families
- administrative institutions, for example the provincial government concerned
- statutory institutions, which are responsible for the official appointment.

As indicated above, succession to traditional leadership was, and still is, gender specific. Succession is hereditary in the male lines only, with the exception of the so-called Modjadjis, where succession is hereditary in the female lines. Ordinarily, the identification of the successor is determined by the relevant customary laws of the tribe or the community concerned. If the identified successor is still a minor, an acting chief, who can be a male or female, is appointed to rule, until the minor has reached maturity and can take over the reign himself. With regard to retirement of traditional leaders, it is interesting to note that customary law does not make provision for voluntary retirement.¹⁹

It is clear from the abovementioned that there are no uniform procedures in the appointment and recognition of traditional leaders. This situation is attributed largely to different norms, values, customs and legislative requirements in different provinces. A much clearer and uniform policy is needed. Apart from a new policy, many com-

¹⁶ As was indicated above, most powers concerning traditional authorities were assigned in 1994 to the various premiers of the nine provinces in South Africa. For more details on the provisions in each province see the discussion document at 25-28.

¹⁷ It should be pointed out that according to current legislation in South Africa traditional leadership is divided into three categories. There are kings or so-called "paramount chiefs", and then there are chiefs and lastly headmen. These titles sometimes have a different meaning in the different provinces.

¹⁸ The six provinces are: The Eastern Cape, Free State, KwaZulu-Natal, Mpumalanga, Limpopo and the North West Province. See the discussion document on Traditional Leaders at 25-28.

¹⁹ However, in some provinces, eg the Eastern Cape and North West, legislation makes provision for the retirement of traditional leaders.

munities have expressed a strong wish to retain their customary practices; since such practices have a very valuable role to play in modern South Africa.²⁰

13.3.3 The role of women and children in traditional leadership

Traditionally South African societies were defined along patriarchal lines, which means that the head of the household was a man, and that his family – wife/wives and children were subordinate to his authority.²¹ In tribal relationships, the wives were responsible for the general welfare of the family, which included the upbringing of children. Furthermore, women were responsible for the co-ordination of family rituals and functions.²²

The colonial and National Party regimes as well as the unprecedented challenges and demands of urbanisation in the 21st century significantly altered the role that women played in traditional communities. The creation of African reserves and, more particularly, migrant labour practices left many women on their own and with many of the responsibilities formerly carried by their husbands. This state of affairs has caused many women in traditional communities to challenge modern practices, which still hinge on discrimination between women and men.²³

Apart from male domination, age and seniority also played an important part in African traditional culture. The youth were raised knowing that they must respect and honour their seniors. Apart from performing small household tasks, most children were left to fend for themselves. In traditional communities minors were seen to belong to their families firstly, but secondly also to the community as a whole. If parents were unable to care for their children, the community would take over such responsibilities.²⁴ Customary law also prohibited children from succeeding in posi-

²⁰ See the discussion document on traditional leaders at 29.

²¹ For many years the position in western countries was very similar to this position.

²² Refer to the discussion paper on traditional leaders at 33.

²³ Probably the best-known example of such a challenge is directed at the traditional succession laws and customs which discriminates towards women. Accordingly, both the Constitution s 9 and the Promotion of Equality and Prevention of Unfair Discrimination Act prevent any discrimination based on sex or gender. The province of KwaZulu-Natal was the first province where women were acknowledged officially as leaders in predominantly patriarchal traditional communities. During 1990 the AmaKhosi and Iziphakanyiswa Act 9 of 1990 was passed, which provided for any person – including women – to be appointed as an inkosi or siiphakanyiswa.

²⁴ This practice prevented homeless and orphaned children in traditional communities. This has changed radically and is one of the most concerning issues in the social balance of the broad South African community.

tions of traditional leadership, and often regents were appointed to act on the minor's behalf until he reached maturity.²⁵

13.3.4 Party political affiliation and the remuneration of traditional leaders

Prior to the Union of South Africa in 1910, the former colonial governments had tried to reconstruct the chieftainship and make it conform to colonial rule.²⁶ Military actions took place in some areas, while in others treaties with tribal authorities were concluded, which allowed for limited tribal autonomy in certain areas. In 1910 and according to the terms of the South African Act of 1909, the Governor-General was conferred as a supreme chief over all African tribes. This led to a gradual reduction of traditional leaders to merely one element in an overall bureaucratic hierarchy.²⁷ In response to the formation of the Union, black Africans began to express certain political demands, and the formation of the African National Congress (ANC) in 1912 represented the first political instrument by which these new demands were articulated. Although the ANC was organised across ethnic and tribal lines, it nonetheless maintained respect for traditional leadership as an institution.²⁸ Suffice it to say that in modern South Africa the participation and inclusion of traditional leadership is strongly rooted in South African political history, and the final Constitution affords every citizen the right to make free political choices, which includes the right to form a political party and to participate in political activities.²⁹

Apart from their early political inclusion, traditional leaders also enjoyed a position of unique privilege and authority regarding their own remuneration. A traditional leader was regarded as a repository of wealth and a dispenser of gifts. The traditional leader and his family normally took precedence in tribal affairs such as rituals or feasts. The traditional leader also had first choice of land to build his house and graze his cattle. All things considered, the traditional leader was the richest man in

²⁵ Today the Constitution prohibits unfair discrimination based on age, and customary law must ensure compliance to the supreme law of the state. See also the discussion document on Traditional Leaders at 35.

²⁶ Often this objective was pursued through military conquest. The so-called "frontier wars" were good examples of such military actions.

²⁷ See the discussion document on Traditional Leaders at 36.

²⁸ When the ANC adopted its first Constitution in 1919 it provided for a forum within its congress known as the Upper House of Chiefs. Through this forum, traditional leaders would have access or representation in the highest political decision-making structure. Apart from showing respect and honouring the status of traditional leaders, the Upper House of Chiefs also served as a mechanism to obtain political consent of all ethnic groupings represented in the political organisation. Refer to the discussion document on Traditional Leaders at 36.

²⁹ See the Constitution s 19(1)(a)-(c).

his tribe.³⁰ The most important source of wealth of a traditional leader was his cattle. Through the introduction of new political structures, traditional customs were reformed, and some of the traditional leaders' powers were taken away. To a large extent traditional leaders became instruments in the hands of the governing administrations, for which role they were also remunerated. Thus, with the new democratic developments, the manner of remuneration of traditional leaders has assumed new dimensions. Traditional leaders are now paid by government on a uniform basis without recognition of the size or respect of the tribe.³¹

13.4 The new legislative framework and requirements regarding traditional leadership

In light of its historical background, traditional leadership as a traditional institution has an important role to play in many rural communities in South Africa. With the complete restructuring of South Africa's constitutional system, traditional leaders insisted on inclusion and protection of not only customary law but also traditional leadership itself. Accordingly, the final Constitution specifically accords constitutional recognition to the institution, status and role of traditional leadership.³² Although the institution, status and role of traditional leadership are recognised, such aspects are subject to the Constitution in general. However, the Constitution is not clear on exactly what role traditional leaders should play within the overall governmental structure. In debating the role of traditional leaders, two viewpoints have emerged. According to the so-called modernistic view, traditional leaders should play only a ceremonial and advisory role in governmental structures. Traditionalists, on the other hand, argue that traditional leaders should participate directly in all activities of government.³³ Closer investigation of the constitutional text reveals that the Constitution favours the modernistic view and that, although traditional leadership is recognised and protected, it is subject to the Constitution and plays only an advisory role in the new democratic structures.

³⁰ Because of his privileged position, traditional leaders were also punished more severely than ordinary tribesmen, when they committed certain offences.

³¹ See the Remuneration of Public Office Bearers Act 20 of 1998, which determines the remuneration of *inter alia* traditional leaders. It is important to note that generally only kings and chiefs are paid remuneration, and not headmen. See the discussion document on traditional leaders at 38.

³² See the Constitution ss 211 and 212.

³³ Refer to Devenish (1998) 295.

13.4.1 *The basic constitutional foundation regarding traditional leadership*

As was stated above, the final Constitution specifically recognises aspects of traditional leadership. In this regard, section 211 of the Constitution provides for the following:

- The institution, status and role of traditional leadership according to customary law are recognised, subject to the Constitution.³⁴ Not all aspects regarding traditional leadership are included; only the aspects that are recorded or part of customary law are recognised. A full investigation or evaluation of customary law principles regarding traditional leadership is therefore needed. Furthermore, the Constitution is very clear that the recognition of the institution, status and role of traditional leadership is not *cart blanche*, but is subject to the Constitution itself.³⁵
- The Constitution further determines that a traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which legislation and customs would also include amendments or repeal of such legislation or customs.³⁶ The Constitution in this instance thus allows for the functioning of a traditional authority which is subject to legislative and customary regulations.³⁷
- When disputes arise with regard to traditional leadership, the Constitution obligates the courts to apply customary law when that law is applicable.³⁸ Traditions

³⁴ See the Constitution s 211(1).

³⁵ This is of course a further outflow of the already accepted and confirmed supremacy principle of the Constitution. See the Constitution s 2. No principles or requirements regarding traditional leadership will be acceptable and enforceable if they are not included in customary law and in complete compliance with all relevant constitutional principles. This would be inclusive of all constitutional requirements, including the Bill of Rights. Any conduct or law that is inconsistent with the Constitution is invalid.

³⁶ See the Constitution s 211(2).

³⁷ As the Constitution is silent on what type of legislative regulation is supposed, it is assumed and submitted that both national and provincial legislation can be applicable in these instances. It must also be pointed out that indigenous law and customary law, cultural matters and traditional leadership, subject to the Constitution ch 12, are all matters of functional areas of concurrent national and provincial legislative competence. Thus, both national and provincial governments can legislate over such matters. See the Constitution Sch 4 Part A. See also the case of *Ex parte Speaker of the KZN Provincial Legislature: In re KwaZulu-Natal Amakhosi and Iziphakanyiswa amendment bill, 1995 1996 (4) SA 653 (CC)*. The case concerned the re-enactment and amendment of the KwaZulu Amakhosi and Iziphakanyiswa Act of 1990. The Act made provision for *inter alia* the payment of a monthly salary, allowances and other privileges to the King of the Zulus. The court held that such payments and allowances to traditional leaders fell within the competence of the provincial legislature. At para 21 at 663F. Refer also to the case of *President of Bophuthatswana v Milsell Chrome Mines (Pty) Ltd 1996 (3) SA 831 (BS)* in which it was confirmed that under the interim Constitution areas such as indigenous law and traditional authorities fell under Sch 6 functional areas of provincial legislative competence. See paras D-F at 844.

³⁸ See the Constitution s 211(3).

and practices of customary law regarding traditional leadership are therefore specifically protected by the Constitution. However, such customary law must be relevant to the circumstances and must be in compliance with the Constitution as supreme law and any other legislation that specifically deals with customary law. The Constitution hereby allows for customary law to be less valued than new legislative prescriptions, be they constitutional or other legislative requirements.

Apart from recognising the role of traditional leadership, the Constitution also determines that national legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.³⁹ It must be pointed out that the Constitution provides for the possible role for traditional leadership only at local level and on matters affecting local communities; such constitutional possibilities are not envisaged for national or provincial spheres of government. In compliance with this constitutional provision, the Local Government: Municipal Structures Act provides for the participation of traditional leaders in municipal councils.⁴⁰

The Constitution further states that in order to deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities that still observe a system of customary law, national or provincial legislation may provide for the establishment of houses of traditional leaders, and only national legislation may establish a council of traditional leaders.⁴¹ Within the authority given in the Constitution, a national house and various provincial houses of traditional leaders have been established.⁴²

13.4.2 The formal recognition and establishment of traditional leadership

In furtherance of the constitutional mandate, national parliament enacted the Traditional Leadership and Governance Framework Act⁴³ during 2003. The purposes of the Act are to provide for the recognition of traditional communities, the establishment and recognition of traditional councils, the establishment of a statutory frame-

³⁹ See the Constitution s 212(1). The Constitution does not allow provincial legislation to provide for the role of traditional leadership. Through national legislation, a uniform role for traditional leadership is to be established.

⁴⁰ See the Structures Act s 81.

⁴¹ See the Constitution s 212(2)(a)-(b).

⁴² For more detail see the Council of Traditional Leaders Act 10 of 1997, as well various provincial Acts such as The House of Traditional Leaders Act 1 of 1995 (Eastern Cape), The House of Traditional Leaders Act 6 of 1994 (Free State), The House of Traditional Leaders Act 4 of 1995 (Mpumalanga), The House of Traditional Leaders Act 12 of 1994 (North-West) and The House of Traditional Leaders Act 7 of 1994 (KwaZulu-Natal).

⁴³ 41 of 2003, hereafter referred to as the TLGFA.

work for leadership positions within the institution of traditional leadership and for aspects such as the general recognition, functions and roles, remuneration, dispute resolution and a code of conduct for traditional leaders.⁴⁴ In general, the Act seeks to fulfil and enhance the broad constitutional protection of the institution of traditional leadership. Apart from the confirmation that the institutions of traditional leadership must be transformed to be in harmony with the Constitution and the Bill of Rights, the Act also envisages that such institutions must:

- promote freedom, human dignity and the achievement of equality and non-sexism
- derive their mandates and primary authority from applicable customary law and practices
- strive to enhance tradition and culture
- promote nation building and harmony and peace amongst people
- promote the principles of co-operative governance in their interaction with all spheres of government and organs of state and
- promote an efficient, effective and fair dispute-resolution system, and a fair system of administration of justice, as envisaged in applicable legislation.

The Act specifically provides for aspects concerning traditional communities and traditional councils, leadership positions within the institution of traditional leadership, houses of traditional leaders, the roles and functions of traditional leadership and also aspects relating to dispute resolution and the commission on traditional leadership disputes and claims. Although the Act is of relevance to all three spheres of government, the following aspects are of particular importance for all local government institutions:

- *Partnerships between municipalities and traditional councils* The Act specifically determines that the national government and all provincial governments must promote partnerships between municipalities and traditional councils through legislative or other measures.⁴⁵ Any such partnership between a municipality and a traditional council must be based on the principles of mutual respect and the recognition of the status and roles of the respective parties. The partnership must also be guided by and based on the principles of co-operative governance. It is further permitted for a traditional council to enter into a service delivery agreement

⁴⁴ See the long title of the TLGFA.

⁴⁵ Refer to s 5(1) of the TLGFA.

with a municipality in accordance with the Local Government Municipal Systems Act and any other applicable legislation.⁴⁶ The obligation that any partnership between a municipality and a traditional council should be guided and based on the principles of co-operative governance is somewhat confusing. According to the Constitution, the principles of co-operative government are applicable to all spheres of government and all organs of state within each sphere.⁴⁷ Municipalities have been confirmed as a distinctive sphere of government and undoubtedly fall under the obligations set out in section 41 of the Constitution. Although institutions of Traditional Leadership or a traditional council could be classified as an organ of state under the Constitution, they are arguably not organs of state within a sphere of government.⁴⁸ In light of the above, it is submitted that the extension of the principles of co-operative government to the partnership between a municipality and a traditional council could well be misguided and unconstitutional. It is also this writer's submission that the constitutional directive incorporated in section 41(2) of the Constitution, does not allow for the extension of the principles of co-operative government to partnerships between municipalities and traditional councils.⁴⁹

- *Referral of Bills to the National House of Traditional Leaders* Under the Act, any parliamentary Bill pertaining to customary law or customs of traditional communities must, before it is passed by the house of parliament where it was introduced, be referred to the National House of Traditional Leaders for its comments. A provincial legislature or a municipal council may adopt the same procedure in respect of the referral of a provincial Bill or a draft by-law to a provincial house of traditional leaders or a local house of traditional leaders.⁵⁰
- *Guiding principles for the allocation of roles and functions of traditional leadership* According to the new legislative provisions, the national government or a provincial government may through legislative or other measures provide a role for traditional councils or traditional leaders. A role may be provided in respect of

⁴⁶ Read ss 5(2)-(3) of the TLGFA together with Act 32 of 2000 as amended.

⁴⁷ See s 41(1) of the Constitution.

⁴⁸ Read s 239 of the Constitution together with the case of *IEC v Langeberg Municipality* 2001 (3) SA 925 (CC).

⁴⁹ S 41(2) of the Constitution determines that an Act of parliament must establish or provide for structures and institutions to promote and facilitate intergovernmental relations and to provide for appropriate mechanisms and procedures to facilitate settlement of intergovernmental disputes. Traditional councils are not part of the hierarchy of governmental institutions.

the following issues: arts and culture; land administration; agriculture; health; welfare; administration of justice; safety and security; the registration of births, deaths and customary marriages; economic development; environment; tourism; disaster management; the management of natural resources and the dissemination of information relating to government policies and programmes.⁵¹ The Act further requires that whenever an organ of state within the national government or a provincial government considers allocating a role for traditional councils or traditional leaders, that organ of state must:⁵²

- seek the concurrence of either the minister responsible for traditional leadership matters or the MEC responsible for traditional affairs in the province concerned;
- consult with the relevant structures of traditional leadership and SALGA;
- ensure that the allocation of a role or function is consistent with the Constitution and applicable legislation;
- take the customary law and customs of the respective traditional communities into account;
- strive to ensure that the allocation of a role or function is accompanied by resources and that appropriate measures for accounting for such resources are put in place;
- ensure, to the extent that it is possible, that the allocation of roles or functions is implemented uniformly in areas where the institution of traditional leadership exists; and
- promote the ideals of co-operative governance, integrated development planning; sustainable development and service delivery through the allocation of roles and functions.

When an organ of state has allocated a role or function to a traditional council or traditional leaders, that organ of state is obligated to monitor the implementation of the function or role and must also ensure that the implementation of the function is consistent with the Constitution and is indeed performed.⁵³

(d) *Code of conduct for traditional leaders and traditional councils* Every traditional leader and members of a traditional council must adhere to a specific code of

⁵⁰ Read s 18 of the TLGFA.

⁵¹ See s 20(1)(a)-(n) of the TLGFA.

⁵² See s 20(2)(a)-(g) of the TLGFA.

⁵³ See s 20(3)-(4) of the TLGFA.