

Free State, South Africa

Guidelines on the Participation of Traditional and Khoi-San Leaders in Municipal Councils

Provincial Notice 7 of 2023

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Guidelines on the Participation of Traditional and Khoi-San Leaders in Municipal Councils (Provincial Notice 7 of 2023)

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Free State South Africa

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Provincial Notice 7 of 2023

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I, M Makume, Member of the Executive Council responsible for Co-operative Governance, Traditional Affairs and Human Settlements in the Province, acting in terms of section 31 of the Free State Traditional Leadership and Governance Act, 2005 ([Act No. 8 of 2005](#)), hereby publish the Regulations contained in the Schedule. Furthermore, the list of Traditional and Khoi-San Leaders who are elected to participate in the proceedings of designated Municipal Councils is attached as Annexure “A”, for general information.

WHEREAS the [Constitution of the Republic of South Africa, 1996](#) (the “[Constitution](#)”) provides for the roles, duties and functions of traditional leadership and is supplemented by the provisions of various statutory instruments, including the Local Government: Municipal Structures Act, 1998 ([Act No. 117 of 1998](#)) (the “[Structures Act](#)”) as amended which provides for the participation of Traditional and Khoi-San Leaders in Municipal Councils, in order to promote sound relationships between the institution of traditional leadership and municipalities;

WHEREAS the legislative and regulatory framework for the management of relations between Municipal Councils and Traditional and Khoi-San Leaders is primarily contained in section 81 of the Structures Act, 1998, which provides for the procedure for participation of Traditional Leaders in Municipal Councils, whilst the amendment to the said Act deals with the election of Traditional and Khoi-San Leaders for the participation in Municipal Councils;

AND WHEREAS the Intergovernmental Relations Framework Act, 2005 ([Act No. 13 of 2005](#)) establishes a framework for national government, provincial governments and local governments to promote and facilitate intergovernmental relations,

NOW THEREFORE these Guidelines provide as follows:

1. Definitions

In these Guidelines—

- 1.1 clause headings are for convenience only and may not be used in interpretation; and
- 1.2 any word or expression to which a meaning is assigned in the Structures Act, bear the meaning so assigned to it, and, unless the context indicates otherwise—

“[Constitution](#)” means the [Constitution of the Republic of South Africa, 1996](#);

“**Councilor**” means a member of the Municipal Council;

“**MEC**” means the Member of the Executive Council responsible for Co-operative Governance, Traditional Affairs and Human Settlements in the Free State;

“**MFMA**” means Local Government: Municipal Finance Management Act, 2003 ([Act No. 56 of 2003](#));

“**Municipal Council**” means a Council referred to section 18 of the Structures Act;

“out-of-pocket expenses” means actual and necessary expenses incurred by a traditional leader which have been specifically authorized or which are provided for in terms of the municipality’s policy, in connection with a specific official or ceremonial duty which has been delegated to the traditional leader in question;

“Provincial House” means the Provincial House of Traditional and Khoi-San Leaders established in terms of section 49 of the Provincial House of Traditional and Khoi-San Leaders Act, 2019 ([Act No. 3 of 2019](#));

“Structures Act” means the Local Government: Municipal Structures Act, 1998 ([Act No. 117 of 1998](#)); as amended;

“Systems Act” means the Local Government: Municipal Systems Act, 2000 ([Act No. 32 of 2000](#)); and

“Traditional or Khoi-San Leader” means a senior traditional leader of the traditional community concerned, or the senior Khoi-San leader who has been recognized in terms of sections 8 and 10 of the Traditional and Khoi-San Leadership Act, 2019 ([Act No. 3 of 2019](#)).

2. Objective of Guidelines

The purpose of these Guidelines is to—

- 2.1 provide an enabling framework that governs and regulates the working relations between the Municipal Councils and traditional leaders;
- 2.2 give effect to the provisions of section 81 of the Structures Act, as amended and section 24 of the Traditional and Khoi-San Leadership Act, 2019 ([Act No. 3 of 2019](#));
- 2.3 strengthen and promote the good relations and partnerships between Municipal Councils and Traditional and Khoi-San Leaders and Councils;
- 2.4 enhance good governance, service delivery, development and stability in traditional community areas;
- 2.5 promote uniformity in the participation of traditional leaders in all affected Municipal Councils throughout the Province;
- 2.6 promote joint mobilization and public participation activities in order to accelerate service delivery;
- 2.7 facilitate participation of Traditional and Khoi-San leadership in all processes of municipalities in the context of integrated development planning; and
- 2.8 ensure acceptable protocol mechanisms between the Municipal Councils and traditional leaders.

3. Application of Guidelines

These Guidelines apply to all—

- 3.1 Traditional and Khoi-San Leaders participating in Municipal Council; and
- 3.2 Municipal Councils in which Traditional and Khoi-San Leaders have been identified to participate in the said council, as contemplated in section 81 of the Structures Act as amended.

4. Enabling provisions

These Guidelines are informed by section 81 of the Structures Act as amended, which provide for the participation of Traditional and Khoi-San Leaders in Municipal Councils and the manner of election of the Traditional and Khoi-San Leaders who are to participate in the Municipal Councils.

5. Status of Traditional and Khoi-San Leaders participation in Municipal Councils

- 5.1 An elected Traditional and Khoi-San Leader may attend and participate in any meeting of the Municipal Council: Provided that the Traditional and Khoi-San Leader concerned is subjected to—
 - (a) the rules and orders of the municipality;
 - (b) the Code of Conduct for Councilors contained in Schedule 1 of the Systems Act; and
 - (c) any regulation or prescribed role issued by the MEC by notice in the *Provincial Gazette*.
- 5.2 An elected Traditional and Khoi-San Leader must be resident of the municipality concerned.
- 5.3 Traditional and Khoi-San Leaders are *ex officio* members of the Municipal Council and are not entitled to vote in any meeting of Municipal Council.
- 5.4 An elected Traditional and Khoi-San Leader cannot be counted for the purpose of the establishing a quorum in the Municipal Council.
- 5.5 An elected Traditional and Khoi-San Leader retains his or her status of Traditional or Khoi-San leadership and will not become a Councilor or a municipal officer by virtue of his or her participation in the proceeding of the Municipal Council.
- 5.6 A Traditional and Khoi-San Leader is entitled to address and advise the Municipal Council on any matter which directly affects his or her jurisdiction, the traditional communities involve or any other matter involving traditional communities in the area of jurisdiction of the Municipal Council concerned.

6. Roles of Traditional and Khoi-San Leaders

Traditional or Khoi-San leaders participating in Municipal Council have the following functions:

- 6.1 to support Municipalities in the identification of community needs in a non-partisan manner;
- 6.2 to influence municipalities in embracing and promoting heritage, language, customs and traditions that are in line with the [Constitution](#);
- 6.3 to facilitate the involvement of the Traditional and Khoi-San communities towards making inputs into the Municipal Integrated Development Plans in as far as Traditional and Khoi-San communities are concerned;
- 6.4 to support municipalities in promoting integrated local economic development planning;
- 6.5 to alert the relevant municipality of any hazard or calamity that threatens their area of jurisdiction, thus contributing to a disaster management programme; and
- 6.6 to support Municipalities in programmes that protect the environment and promotes a green economy.

7. Roles of municipality

- 7.1 The Municipal Council must pay, from its own budget, all out-of-pocket expenses to traditional leaders for participating in municipal proceedings: Provided that the relevant Municipal Council can determine the criteria for, and calculation of, such out-of-pocket expenses.
- 7.2 The Municipal Council must ensure that each Traditional and Khoi-San Leader is provided with a copy of the Code of Conduct for Councilors and the Standing Rules and Order of the Municipal Council.
- 7.3 The Municipal Council, with the support of the Department, must strengthen the capacity of Traditional and Khoi-San Leaders to participate in Municipal Council.

- 7.4 The Municipal Council must inform the Provincial House of Traditional and Khoi-San Leaders and the MEC in the event of any breach of the Code of Conduct contained in Schedule 1 of the Systems Act by any Traditional and Khoi-San Leaders participating in a specific Municipal Council.

8. Relationship between Municipal Council and Traditional and Khoi-San Leaders

- 8.1 The municipality and Traditional and Khoi-San Leaders participating in Municipal Councils must give effect to the principles of co-operative governance.
- 8.2 The Municipal Council and Traditional and Khoi-San Leaders must co-operate with one another in good faith and on the basis of mutual trust and respect by-
- (a) establishing a sound working relationship;
 - (b) assisting and supporting one another in the execution of their roles and responsibilities; and
 - (c) developing communication channels for information sharing, coordinating and consultation.

9. Accountability of Traditional and Khoi-San Leaders participating in municipalities

- 9.1 Traditional and Khoi-San Leaders participating in Municipal Councils must conduct themselves in terms of the provisions of the Code of Conduct as contemplated in Schedule 1 of the Systems Act.
- 9.2 Traditional and Khoi-San Leaders participating in Municipal Councils must table reports of their meetings at least quarterly to Traditional and Khoi-San Councils and Local Houses concerned.
- 9.3 The above meetings must be held at the seat of the municipality or such other place as may be determined by the municipality.

10. Monitoring and evaluation of the framework/guidelines

The Department must, on an ongoing basis, monitor and evaluate the participation of Traditional and Khoi-San Leaders in a Municipal Council and may implement such recommendations as maybe necessary to give effect to the provisions of the Structures Act and these Guidelines.

11. Review of the framework/guideline

These Guidelines must regularly be reviewed to determine their effectiveness and appropriateness, as well as to be responsive to new challenges and circumstances as and when need arises.

12. Short title and implementation date of the Guidelines

These Guidelines are called the Guidelines on the Participation of Traditional and Khoi-San Leaders in Municipal Councils, 2023 and take effect from the date of publication in the *Provincial Gazette*.

Annexure A

Name of the Municipality	Number of Councillors	No. of Traditional Leaders who holds supreme	Names of elected Traditional Leaders	Details of the Traditional Leaders
Phumelela Local Municipality	15	1	Kgosi Nkgahle Tsotetsi: ID: 680507 5372 08 2	No. 3 De Jager Street Vrede 9870
Thabo Mofutsanyana District Municipality	32		Morena Edgar Letsie Mopeli: ID: 8310225 486 08 8	987 Maboela Village Witsieshoek 9870
Thabo Mofutsanyana District Municipality	32		Morena Qejwayo Daniel Moloi: ID: 651017 5441 08 0	413 Mahaseng Village Khutlong sa Kholokoe Harrismith 9880
Thabo Mofutsanyana District Municipality	32		Mofumahadi Manapo Gloria Mopeli: ID: 88081 4087 08 0	426 Qoqolosing Thaba Bosiu Qwaqwa Witsieshoek 9870
Maluti a Phofung Local Municipality	70	11	Morena Sebuti Mopeli ID: 540519 5309 08 9	318 Paballong Village Witsieshoek 9870
Maluti a Phofung Local Municipality	70	11	Morena Lerotholi Mopeli ID: 760610 5787 08 4	547 Namahadi Village Mokodumela Qwaqwa 9868