



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 195

1997

### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 8 of 1997: Traditional Authorities Amendment Act, 1997.

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**EXPLANATORY NOTE**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[            ] Words in bold type in square brackets indicate omissions from existing provisions.

**ACT**

**To amend the Traditional Authorities Act, 1995.**

*(Signed by the President on 19 September 1997)*

**BE IT ENACTED** by the Parliament of the Republic of Namibia as follows:-

**Amendment of section 1 of Act 17 of 1995**

**1.** Section 1 of the Traditional Authorities Act, 1995 (Act 17 of 1995) (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "chief" of the following definition:

"'chief' means [**a chief**] the supreme traditional leader of a traditional community designated in accordance with section 3 and recognised as such under section 6, and includes a senior traditional councillor who is designated as the supreme traditional leader of a traditional community which does not have a chief;".

**Amendment of section 2 of Act 17 of 1995**

**2.** Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of this Act every traditional community [**may**] shall be entitled to have a traditional authority comprising the following traditional leaders, namely-

- (a) one chief; [**or**]
- (b) [**one**] senior traditional councillors [councillor]; and
- (c) [**such number of**] traditional councillors,

as may be designated in accordance with the provisions of this Act: Provided that where a traditional community does not have a chief, they may designate a senior traditional councillor as their supreme traditional leader.".

**Substitution of section 4 of Act 17 of 1995**

3. The following section is hereby substituted for section 4 of the principal Act:

**“Designation of senior traditional councillors, traditional councillors and secretary**

4. (1) Subject to the provisions of sections 5 and 6, a chief shall in consultation with the members of his or her traditional community, appoint from amongst the members of that community -

- (a) senior traditional councillors who shall assist the chief in the performance of his or her functions and duties, and perform such other duties as may be delegated to them by the chief; and
- (b) traditional councillors who shall advise the chief and senior traditional councillors in the performance of their duties.

(2) A chief shall designate one person from amongst the senior traditional councillors appointed under subsection (1), to act in his or her stead whenever the chief is unable to perform his or her duties, except in the circumstances contemplated in section 11.

(3) The qualifications for designation and the tenure of or removal from office of a senior traditional councillor or traditional councillor shall be regulated by the customary law of the traditional community in respect of which such traditional leader is designated.

(4) A chief shall from time to time appoint one person as a secretary and he or she shall perform such duties and functions as may be assigned to him or her by the chief.”

**Substitution of section 5 of Act 17 of 1995**

4. The following section is hereby substituted for section 5 of the principal Act:

**“Minister to receive prior notification**

5. (1) Where a traditional community intends to designate a traditional leader in terms of this Act, the members of that traditional community, or the chief, as the case may be, shall apply in writing to the Minister for approval to make such designation, which application shall state the following particulars -

- (a) the communal area inhabited by that traditional community;
- (b) the reasons for the proposed designation;
- (c) the name, office and traditional title if any, of the candidate to be designated as traditional leader;
- (d) the customary law and rules of procedure applicable in that community in respect of such designation; and
- (e) such further information as the Minister may require.

(2) On receipt of an application complying with the provisions of subsection (1), the Minister shall subject to the provisions of subsection (3), grant approval in writing for the proposed designation.

(3) Where in relation to an application referred to in subsection (1), the Minister is of the opinion -

- (a) that the person sought to be designated as a traditional leader represents a group of persons who are members of a traditional community in respect of whom traditional leaders have been designated and recognised under this Act or that such group of persons do not constitute an independent traditional community inhabiting a common communal area detached from another traditional community; and
- (b) there are no reasonable grounds for recognising such group of persons as a separate traditional community,

the Minister shall advise the President accordingly.

(4) On receipt of the Minister's advice under subsection (3), the President shall refer the matter to the Council of Traditional Leaders established by section 2 of the Council of Traditional Leaders Act, 1997, for its consideration and recommendation.

(5) Any recommendation which the Council may wish to make in relation to any matter referred to it in terms of subsection (4), shall be submitted by the Council to the President within 90 days after referral of that matter to the Council.

(6) On receipt of a recommendation made in terms of subsection (5), the President shall in his or her discretion, in writing, either reject the proposed designation or grant approval for such designation to the members of the traditional community concerned or the chief, as the case may be.

(7) On receipt of the written approval granted under subsection (2) or (6), the members of the traditional community concerned or the chief, as the case may be, shall in writing notify the Minister of the date, time and place of such designation, whereupon the Minister or his or her representative shall attend the ceremony in respect of which he or she has been notified and shall -

- (a) witness the designation of the traditional leader concerned; and
- (b) satisfy himself or herself that such designation was in accordance with the customary law and rules of procedure referred to in paragraph (d) of subsection (1).

(8) Where -

- (a) the Minister is not given prior notification of a designation in accordance with the provisions of subsection (1); or
- (b) the designation of a traditional leader is not conducted in accordance with the customary law and rules of procedure referred to in paragraph (d) of subsection (1),

the designation of the traditional leader concerned shall be rendered invalid.

(9) Where in respect of a traditional community -

- (a) no customary law or rules of procedure regarding the designation of a chief exist; or
- (b) there is uncertainty or disagreement amongst the members of that community regarding the provisions of the customary law or rules of procedure referred to in paragraph (a),

the members of that traditional community in general meeting, shall elect their chief by a majority vote of all the members present in that meeting who have attained the age of eighteen years.”.

#### **Amendment of section 6 of Act 17 of 1995**

5. Section 6 of the principal Act is hereby amended -

- (a) by the substitution for subsections (4) and (5) of the following subsections:

“(4) A person who before the commencement of this Act [**is duly**] was designated as a traditional leader in respect of

his or her traditional community, and in respect of whose designation written notification has been submitted to the Minister, whether or not such traditional leader receives remuneration from the Government in respect of his or her traditional functions, shall have his or her designation recognized anew under this section and for that purpose his or her traditional community shall before or on a date determined by the Minister by notice in the Gazette -

- (a) ensure that the structure of their traditional authority conforms to the provisions of section 2; and
- (b) notify the Minister in writing of the designation of their traditional leader or leaders.

(5) The provisions of subsections (1) and (2) of this section shall *mutatis mutandis* apply to a traditional leader in respect of whose designation, notice has been submitted to the Minister under paragraph (b) of subsection (4)."; and

- (b) by the deletion of subsection (6).

#### **Amendment of section 11 of Act 17 of 1995**

6. Section 11 of the principal Act is hereby amended -

- (a) by the substitution for subsections (2) and (3) of the following subsections:

“(2) **[Notwithstanding anything contained in this Act to the contrary, no person shall while holding a political office also hold office as a traditional leader and]** Where any person holding the office of **[traditional leader] chief** is elected or appointed to a political office, he or she shall **[relinquish the office of traditional leader before taking up the political office]** upon such election or acceptance of such appointment be considered to have taken leave of absence from the office of chief for the duration that he or she holds such political office.

(3) Every chief elected or appointed to a political office shall forthwith notify the Minister in writing of the date with effect from which he or she holds such political office.”; and

- (b) by the addition of the following subsections:

“(4) The Minister shall cause notice to be given in the Gazette of the appointment or election of any chief to a political office and of the date from which such appointment or election is

of force.

(5) Any person who immediately before the commencement of the Traditional Authorities Amendment Act, 1997 held the office of chief as well as a political office shall with effect from the date of commencement of that Amendment Act be considered to have taken leave of absence from the office of chief.

(6) Where a person holding a political office becomes a chief he or she shall with effect from the date that he or she was recognized as such under section 6 be considered to have taken leave of absence from the office of chief for the duration that he or she holds such political office.

(7) A chief who by virtue of subsection (2), (5) or (6) is considered to have taken leave of absence from the office of chief shall, during that period of leave of absence, not be entitled to be accorded the status of chief and to receive the remuneration payable to a chief under this Act.

(8) The traditional community concerned may when its chief is considered to have taken leave of absence in accordance with subsection (2), (5) or (6) designate any member of its traditional community to act as chief for the duration of that period of leave of absence and the person so designated shall during the period that he or she acts as chief fulfil the functions of chief of that traditional community and receive remuneration under this Act as if he or she were a chief designated and recognized in accordance with the provisions of this Act.

(9) For purposes of this section, "political office" means the President of the Republic of Namibia, a member of the National Assembly, National Council or of a Regional Council, and includes a leader of a political party, whether or not that political party is registered under section 39 of the Electoral Act, 1992 (Act 24 of 1992).

(10) To the extent that the provisions of this section authorise a limitation upon the right of a chief to hold a political office or the holder of a political office to hold the office of chief, such limitation is authorised on grounds of public interest as contemplated in Article 17(3) of the Namibian Constitution.

(11) Nothing in this section contained shall be construed as derogating from the provisions of section 8."

**Substitution of section 12 of Act 17 of 1995**

7. The following section is hereby substituted for section 12 of the principal Act:

**“Relationship of traditional authorities with Government Organs**

12. (1) In the performance of its duties and functions and exercise of its powers under customary law or as specified in this Act, a traditional authority shall give support to the policies of the [central] Government, regional councils and local authority councils and refrain from any act which undermines the authority of those institutions [as established by law].

(2) Where the powers of a traditional authority or traditional leader conflict with the powers of the [organ of the central] Government, regional councils or local authority councils, the powers of the [central] Government, regional council or local authority council, as the case may be, shall prevail.”.

**Substitution of section 13 of Act 17 of 1995**

8. The following section is hereby substituted for section 13 of the principal Act:

**“Remuneration of traditional leaders**

13. (1) Subject to subsection (2), there shall be paid from moneys appropriated by Parliament remuneration -

(a) to the traditional leaders of a traditional community in respect of-

(i) one chief;

(ii) not more than six senior traditional councillors; and

(iii) not more than six traditional councillors,

designated and recognized in accordance with the provisions of this Act, notwithstanding the fact that more than six senior traditional councillors and more than six traditional councillors may have been designated and recognised in respect of a particular traditional community under this Act; and

(b) to the secretary of a traditional community appointed under section 4(4).



(2) The Minister, in consultation with the Minister of Finance, shall by regulation prescribe the remuneration payable in respect of each category of traditional leaders referred to in subsection (1), regard being had to the status, duties and responsibilities of each office and in respect of secretaries.

(3) Every traditional community in respect of whom more than six persons have been designated and recognized as senior traditional councillors and more than six persons have been designated and recognized as traditional councillors shall notify the Minister in writing of the names of those senior traditional councillors and traditional councillors who shall be entitled to receive remuneration under this Act.

(4) Subsections (1) and (3) shall not be construed as preventing a traditional community from remunerating senior traditional councillors and traditional councillors who are not under those subsections entitled to remuneration.

(5) A traditional leader referred to in subsection (4) of section 6 who before the commencement of this Act received remuneration from the Government and who is not entitled to remuneration by virtue of the provisions of subsections (1) and (3), shall continue to be paid the remuneration which was so payable to him or her until a date determined by the Minister by notice in the *Gazette*, but thereafter the Government shall in respect of each traditional community remunerate only those traditional leaders referred to in subsection (1).”.

#### **Amendment of section 14 of Act 17 of 1995**

9. Section 14 of the principal Act is hereby amended by the deletion of subsections (3) and (4).

#### **Amendment of section 15 of Act 17 of 1995**

10. Section 15 of the principal Act is hereby amended -

(a) by the substitution for paragraph (a) of the following paragraph:

“(a) the remuneration to be paid to traditional leaders and secretaries, as prescribed [as determined] under subsection (2) of section 13;” and

(b) by the deletion of paragraph (b).

**Repeal of Schedule to Act 17 of 1995**

11. The Schedule to the principal Act is hereby repealed.

**Short title**

12. This Act shall be called the Traditional Authorities Amendment Act, 1997.
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