



cogta

Department:
Co-operative Governance and Traditional Affairs
MPUMALANGA PROVINCIAL GOVERNMENT

POLICY ON APPOINTMENT AND REMOVAL OF HEADMAN/WOMAN 2018/19



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1. PURPOSE

To provide the policy on the appointment and the removal of headman/woman.

2. REGULATORY FRAMEWORK

This policy derives its mandate from the following legislation and prescripts:

- 2.1. Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003)
- 2.2. Mpumalanga Traditional Leadership Governance Act, 2005 (Act No.3 of 2005)
- 2.3. The Constitution of the Republic of South Africa, 1996
- 2.4. Labour Relations Act, 1995 (Act No.66 of 1995)
- 2.5. Promotion of Administrative Justice Act, (Act No.3 of 2000)

3. SCOPE OF THE POLICY

The policy shall apply to all headman/woman recognised and appointed in terms of Section 21 of the Mpumalanga Traditional Leadership Governance Act, 2005 (Act No.3 of 2005).

4. DEFINITIONS

“Headman/ woman”: means a traditional leader who:

- a) is under the authority of or exercises authority within the area of jurisdiction of a Senior Traditional Leader in accordance with customary law, and
- b) is recognized as such in terms of the Act, Act 41 of 2003

“Inner Royal family”: means a structure consisting of the senior members of the ruling family within a traditional community who has been identified in terms of customs;

“LRA” means Labour Relations Act, 1995 (Act No.66 of 1995);

“MEC”: means the Member of the Executive Council responsible for Traditional Leadership matters;

“Notice” a description of the allegations or grounds of removal and the main evidence on which the Traditional Leader rely;

“Senior Traditional Leader”: means a person born from a defined mother in accordance with the traditions, customs and norms of the traditional community concerned and who is recognized as such in terms of section 19 of Act 3 of 2005;

“PAJA”: means Promotion of Administrative Justice Act, (Act No.3 of 2000);

“The Act”: means Mpumalanga Traditional Leadership Governance, 2005 (Act No.3 of 2005)

“The Framework Act”: means Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003)

5. PROVISIONS FOR APPOINTMENT

The appointment must be done in terms must be done in terms of Section 21 of the Mpumalanga Traditional Leadership Governance Act, 2005 (Act No.3 of 2005).

6. PROVISIONS FOR WITHDRAWAL OF RECOGNITION AND REMOVAL

- 6.1. The withdrawal and removal must be done in terms of Section 22 of the Mpumalanga Traditional Leadership Governance Act, 2005 (Act No.3 of 2005).
- 6.2. In order to ensure compliance with the principle of “*Audi alteram partem rule*” (hearing the other side of the story), as provided for in PAJA read with the LRA, the following must be complied with in applying the procedure referred to in terms of Section 22 of the Mpumalanga Traditional Leadership Governance Act, 2005 (Act No.3 of 2005).
- 6.3.
 - 6.3.1. The Senior Traditional Leader must notify the affected Headman/woman of intention to remove him/her and the reasons thereof and call upon the Headman/ woman to respond, within 24 (twenty four) hours.
 - 6.3.2. Upon response, the Senior Traditional Leader must in consultation with the Inner Royal Family reconsider or proceed with the removal of Headman/ woman.

6.3.3. If the Senior Traditional Leader is not satisfied with the response of the Headman/ woman, he/ she must:

6.3.3.1. Invite the Headman/ woman to a disciplinary hearing;

6.3.3.2 Give the Headman/ woman Notice of least 48 (fourty eight) hours before the date of the hearing.

6.3.3.3 The Headman/ woman must sign receipt of the Notice.

- (a) Should the Headman/woman be absent from his/ her delivery address, the Notice must be received by an adult present in the delivery address of the Headman/woman, who shall sign receipt thereof;
- (b) Should the Headman/woman refuses to sign receipt of the Notice, the Notice must be given to him or her in the presence of two witnesses who shall sign in confirmation that the Notice was delivered and received.

6.3.4 The Notice must reflect the following;

- a) Details of the date, time, place and venue of the hearing; and
- b) Information on the rights of the Headman/ woman to representation by a fellow colleague, a family member or any community member of his or her choice, and to bring evidence and /or witnesses to the hearing.
- c) In a disciplinary hearing, neither the employer nor the employee may be represented by a legal practitioner, unless:
- d) The employee is legal practitioner or the representative of the employer is a legal practitioner and the direct supervisor of the employee charged with misconduct

6.3.5 appoint a person who shall act as a prosecutor to represent the Senior Traditional Leader during the disciplinary hearing;

6.3.6 appoint a person who shall act as chairperson to preside over the disciplinary hearing;

6.3.7 The chairperson must keep a record of the Notice and the proceedings of the hearing;

6.3.8 If the chairperson finds that the allegations against the Headman/ woman have been confirmed, the chairperson must inform the Headman/ woman of the findings and the reasons thereof as well as subsequent decision.

6.3.9 Before deciding on a penalty, the chairperson must give the Headman/ woman an opportunity to present relevant circumstances in mitigation. The prosecutor may as well present aggravating circumstances.

6.3.10 The Senior Traditional Leader must communicate the penalty to the Headman/ woman within five working days after the mitigating and aggravating circumstances have been presented, and such must be recorded in the Headman/ woman's personal file.

6.3.11 Should the Headman/ woman not be satisfied with the disciplinary hearing, he or she may follow the dispute or review procedure as outlined in the PAJA read with the LRA.

7 REVIEW OF POLICY

This policy will be reviewed annually or as and when the need arises and it should be in line with legislations and prescripts.

8 CONTRAVENTIONS

Any person who contravenes or fails to comply with any provision of this policy may be subjected to disciplinary action.

THUS DONE AND APPROVED BY THE ACCOUNTING OFFICER

APPROVED/ ~~NOT APPROVED~~



MR TP NYONI

HEAD: CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

DATE 29/03/2018