



INDEPENDENT COMMISSION FOR THE REMUNERATION OF PUBLIC OFFICE BEARERS

MEMORANDUM

To	Judge C Musi – Chairperson and Commissioners
From	Mr PM Makapan Head of Secretariat
Date	15 September 2016
SUBJECT	Traditional Leaders' Indaba - 26 – 27 August 2016, Protea Hotel Edward, Durban, KZN

EVENT SUMMARY

Indaba Theme: The role of Traditional Leadership in the democratic dispensation.

Presentation themes:

- The envisaged role of Traditional Leaders in the democratic dispensation
- The role of Traditional Leaders in Local Government
- Findings and Recommendations of the Commission on Traditional Leaders' Dispute and Claims (CTLDC) on Principal Traditional Leadership
- Envisaged review for the remuneration of Traditional Leadership POBs
- Overview of the Commission's mandate on traditional leadership
- Inter-governmental support for traditional leadership structures

Of the 120 invited delegates, 94 attended (see the attached register).

Introduction and background

1 Section 5(1) of the Remuneration of Public Office Bearers Act, Act No 20 of 1998 states that: " Traditional leaders, non-traditional leader members of any traditional council, non-traditional leader members of any kingship or queenship council, non-traditional leader members of traditional sub-councils, non-traditional leader members of principal traditional councils; members of any Local House of Traditional Leaders, members of any Provincial House of Traditional Leaders and members of the National House of Traditional Leaders shall, despite anything to the contrary in any other law contained, be entitled to such salaries and allowances as may from time to time be determined by the President after consultation with the concerned Minister by proclamation in the *Gazette*, after taking into consideration amongst others:

- a. any recommendations of the Commission; and
- b. the role, status, duties, functions and responsibilities of the different categories of traditional leaders, non-traditional leader members of traditional councils, non-

traditional leader members of traditional sub-councils, non-traditional members of principal traditional councils; members of kingship or queenship councils, non-traditional members of kingship or queenship councils, different members of the local Houses of Traditional Leaders, different members of the Houses of Traditional Leaders in the various provinces and different members of the National House of Traditional Leaders.

- 2 During the Commission's Strategic Planning Session for 2015/2016, held on 30 – 31 January 2015, the Commission resolved to undertake stakeholders' engagements with all its stakeholders. The purpose of these engagements is to collate all concerns and challenges that affect the remuneration structures of Public Office Bearers (POBs) in totality, so as to assist the Commission in making annual recommendations that are independent, transparent, accountable, informed and sustainable. The stakeholder engagements commenced from April 2015 until May 2015.
- 3 The Commission meeting of 21 August 2015 further resolved to conduct a detailed remuneration review on the practices and principles that are used to determine the remuneration of the traditional leadership positions, as well as the quantum paid to incumbents of these positions.
- 4 During the Commission meeting held on 01 April 2016, it was resolved that there is a need for a Traditional Leaders' Expert conference that would assist the Commission in collating relevant information, ensuring the understanding of the sector and to enhance terms of reference (ToR) to review the remuneration of recognized traditional leadership positions.

Welcome and overview of the Indaba

- 5 The Chairperson of the Commission, Judge C J Musi, outlined the overview of the purpose for Conference by *inter alia* referring to the Constitution that confirms the recognition and roles of traditional leaders (TLs) as indicated below:
 - Section 211 provides that the institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution
 - Section 212 provides that the National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities
 - Section 219 provides that the remuneration of persons holding public office indicating that an Act of Parliament must establish a framework for determining the salaries, allowances and benefits of members of the National Assembly, permanent delegates to the National Council of Provinces, members of the Cabinet, Deputy Ministers, traditional leaders and members of any councils of traditional leaders
- 6 The recognition of TLs is justified by the constitution and customary law. However, there are many clashes and areas of confusion regarding the purpose and reason for the existence of TLs in the Republic. The Chairperson provided an example of the recognition TLs receive in countries like England and the Netherlands.
- 7 He further specified that the Commission, when making annual remuneration recommendations to the President, must consider the roles, functions, and responsibilities of TLs.
- 8 The Chairperson indicated that there has been confusion and tensions as to the role of TLs. Where does each role reside? SALGA was also invited due to their oversight and advisory role on the involvement of TLs in local government.

- 9 The Commission acknowledges the TLs' existence and that the Commission should establish their structure and refine it. All these issues have also been included in CTLDC. The issues raised range from:
- At what level should TLs be paid? What does their job entail (roles, status, and functions across their ranks)?
 - Introduction of the role of Principal Traditional Leadership (PTL) and how this relates to Kings / Queens
- 10 He also indicated that in KZN, there was a concern that Izindunas are underpaid and their views must also be heard.

Way forward

- 11 TLs salaries should be completely reviewed through a research project which will be conducted. The Indaba needs to provide input to the philosophy around the role TLs.
- 12 The Commission is also engaging the Director General of Department of Traditional Affairs on the challenges and pending legislation of TLs.

Opening Address by Deputy Minister of Cogta

- 13 The Deputy Minister, Mr O Bapela, emphasized the cry by TLs on their welfare and the system that is not fair towards them. TLs are funding the requirements of their roles personally in order to execute their mandates.
- 14 There is a need to revisit the basis on how to remunerate TLs, and reference was made to the previous Commission's major review report by the former Chairperson, former Deputy Chief Justice D Moseneke, that engaged the TLs and resulted in certain recommendations.
- 15 The Deputy Minister indicated that the roles of Kingdoms evolved resulting in dispossession of land and battles. Land issues caused problems on land ownership and an example that was cited is situations in England and Ghana.
- 16 The Deputy Minister advised the Commission to explore other means of support to the TLs instead of remuneration and benchmark with countries that are providing their TLs with this kind of support, especially in African countries.
- 17 Legislative Framework was introduced and implemented but was not costed.
- 18 The Deputy Minister requested the Commission to assist with the definition of the nation or community and how many people should form a community.

The envisaged role of traditional leaders in the democratic dispensation

- 19 The Chairperson of the National House of Traditional Leaders, Kgosi P Maubane, indicated that the Indaba marks another attempt of restoring the dignity of TLs that was eroded by the past regime in a democratic dispensation that was never restored properly.
- 20 Kgosi indicated that TLs are dissatisfied by the fact that there had been talks about their roles which make the members of the institution feel less important than other POBs.
- 21 He mentioned that there was lack of monitoring on implementation of President's determinations and reference was made to non-implementation of TLs retirement and tools of trade.
- 22 Amongst others; reference was made to Chapters 7 and 12 of the Constitution, Section 81 of the Municipal Structures Act, Section 7 (2) (d) of the Municipal Systems Act, the Traditional Leadership and Governance Framework Act, the Intergovernmental Relations Framework Act and the Disaster Management Act.
- 23 It was specified that TLs manage and utilize land under their jurisdiction for the benefit of their communities in terms of customs and customary laws of various communities.
- 24 He alluded that TLs play a role in the rural economy and that the role of TLs in a democratic SA regarding the economic transformation cannot be downplayed as some traditional leaders have developed their areas more than what the municipality could do.
- 25 The traditional leaders have to ensure that:
 - Rehabilitation of the offenders takes place
 - Compensation of the aggrieved party in terms of the custom and customary law
 - Promotion of peace and order within the community (dispute resolution)
 - Promotion of reconciliation and nation building through the development and maintenance of customary law and procedure
 - Development, maintenance and promotion of community value system

The role of traditional leaders in local government

- 26 The Deputy Chairperson of SALGA, Mr M Nawa's presentation focused on the participation of TLs in the municipal structures and processes as well as on the impact of the current traditional leadership legislation in defining the role of TLs in the context of the present democratic system, in particular the partnerships foreseen between the traditional councils and municipalities.
- 27 Mr Nawa mentioned that the traditional leadership institution occupies an important role in the system of local government and that it embodies the preservation of culture, tradition, customs and values of the African people while also representing the early forms of societal organization and governance.

- 28 He indicated that the adoption of the country's Constitution marked the ushering in of a new era and laid the basis for transformation of institutions of governance like traditional leadership; to bring them in line with the new democratic order and constitutional principles such as equality and non-discrimination. The TL system provides social responsibility towards the communities and the municipality can't undermine this responsibility.
- 29 From a local government point of view, there is a need of proper understanding of the roles and responsibilities of traditional leaders not only within local government but also within the national and provincial spheres of government.
- 30 It was mentioned that key to local government is the partnerships that should be established between the municipalities and traditional councils and these partnerships must be based on the principles of mutual respect and recognition of status and the roles of respective parties.
- 31 Mr Nawa emphasized that the majority of the rural population is moving towards urban areas requiring TLs to respond to this evolution in a specific manner. The influx of foreigners and their business ownership within traditional rural areas further pose a risk on security to the country.
- 32 The National Development Plan provides the space for the role of TLs to play in society. The art of thinking and leadership profiling should enhance economic participation of TLs.
- 33 The concern that was raised by local government is the high emergence of Izindunas which is not sustainable and had bearing on the government resources caused by a demand for higher levels of remuneration.
- 34 Mr Nawa advised that partisanship of TLs is required for reference points on stakeholders' engagement. Government should keep in touch with traditional communities' and the authority of TLs should be protected.

The remarks of Contralesa

- 35 The General Secretary of Contralesa, Nkosi Ndevu presented a view that the position of the ruling party including provision of the Constitution in relation to the Institution of Traditional Leadership was problematic. He indicated that their efforts in trying to persuade the ruling party to amend legislation and regulations have failed. He cited the situation in which culture dictates that boy children are the only ones to inherit the throne, however the constitution provides for equality and in particular gender equality and non-discrimination on the basis of sex.
- 36 Nkosi Ndevu, whilst welcoming all inputs and presentations lamented the use of Western situations and lessons. He emphasised that it is difficult to want to implement Western Traditional Leadership situations or least to compare them as the environment and politics differ significantly. Further, he informed the conference that he has reservations with the theme or topic of the conference in that the topic pre-empts a change to the status quo i.e. the tradition of governance in relation to the constitutional democracy. His

view is that the Institution of Traditional Leadership and governance in Traditional Leadership should be preserved and not amended in line with Western norms as dictated by the constitution.

Panel discussions:

- TLs role on a nation building, social cohesion, moral degeneration, what are citizenship, human dignity and respect?
- TLs are recognised by whom? Traditional Leadership Governance Framework Act provides the functions of TLs. There is no update of the law and reverencing on implementation. Debates are endless on legislative review, and resolutions of the National House should have impact on other houses and legislation
- TLs role on development is overlooked or downplayed, and is this done purposefully or not? There should be developmental responsibility which will enhance community development. Subjects has changed to be citizenship
- Why was the position of PTL recommended and established?
- Reference was made on the Commission's mission of total remuneration for all POBs and why it is not implemented for TLs?
- Reference was made to the constitutional democracy of our country which promotes co-existence and functionality of institutions like traditional leadership, which is not engaged
- Traditional Leadership institutions in this democracy are viewed as resource-heavy or a burden to the country. There should be resources for TLs as well as access to the resources by contesting power at local levels
- Indication of political will and support towards TLs in Mpumalanga was highlighted (provision of cows to TLS, budget for heritage functions and tractors). Concern on KZN for not providing resources and stoppage of incentives in Eastern Cape was link to the political will
- It was enquired whether a handover process took place within the Commission from previous Commissioners in terms of their previous, standing projects and programmes as the same information is solicited again which was previously provided. An example of China was made
- Implementation and monitoring plan system on recommendations and determinations is required
- Inheritance should be left to the royal family and government is not entering that terrain. The NHTL is attempting to protect the girl child inheritance and equality clause within the constitution
- TLs practiced direct democracy and their remuneration is important and there a need for uniform approach of tools of trade and benefits. The panel called for a clear remuneration of TLs

Findings and recommendations of the CTLDC

37 Prof. M Moleleki of CTLDC advised that the Commission was established to investigate claims and disputes, and to restore the dignity of traditional leaders.

- 38 It was required to start the investigation with the then existing paramouncies and Paramount Chiefs. This Commission had only recommended the recognition of Modjadjie as a Queenship and Queen.
- 39 No traditional leaders were demoted or dethroned, although the Commission found that some paramouncies and Paramount Chiefs did not qualify to be recognised as kings. Government amended the Traditional Leadership and Governance Framework Act in 2009 to provide for transitional arrangements to those who did not qualify to be Kings.
- 40 A new position of traditional leadership was created which is autonomous from the kingship called Principal Traditional Leader which is the one occupied by those who have succeeded.

The role of the Commission in determining the remuneration and benefits of PTL

- 41 Mr Pheto indicated that the term PTL is an indigenous title that was not found in the South African context.
- 42 The CTLDC during its investigation of paramouncies and paramount chiefs came up with the title PTL. According to the findings of the CTLDC these were the paramouncies that did not qualify i.t.o customs, customary law to be Kings/Queens.
- 43 The Traditional Leadership Governance & Framework Act was then amended to include the Principal Traditional Leaders in the traditional leadership structure and the structure was then as follows:
- King or Queen
 - Principal Traditional Leader
 - Senior Traditional Leader; and
 - Headmen
- 44 The role players of the process were identified as follows:
- CTLDC: Determined whether paramouncies qualified in terms of customs and customary law to be Kingship/Queenship
 - Department of Cooperate Governance and Traditional Affairs (COGTA): Principal Traditional Leader cannot be remunerated at the same level as Kingship/Queenship
 - The Commission: Consultations with paramouncies deemed Principal Traditional Leaders
- 45 When making the recommendations, the Commission considered the role, status, duties, functions and responsibilities of Kingship/Queenship and Principal Traditional Leaders.
- 46 During its investigation, the Commission's findings are as follows:
- There were no substantive differences are evident to distinguish i.t.o roles, status, duties, responsibilities, etc.
 - Both the King/Queen and Principal Traditional Leader do not report to anyone

- The change in title has not been sufficient to influence substantive change in their remuneration

47 The following are the Commission's conclusions:

- King/Queen/Principal Traditional Leader has similar roles and responsibilities
- Status in their nations and communities are the same
- Similar roles and responsibilities will result in an equal job evaluation / grading result
- The principle of equal pay for equal responsibilities
- King/Queen/Principal Traditional Leader should principally, receive equal pay commensurate with their roles, status, duties, functions and responsibilities

Panel discussions

48 In 2004 the CTLDC was established to deal with a gap and investigate claims and disputes of traditional leaders, it had a five year term of office. It was required to start the investigation with the then existing paramountcies and Paramount Chiefs. In 2008, the CTLDC was given the decision making power and released the report for qualification for paramountships in terms of criterion emanating from the legislation.

49 The report has far reaching implications for government and the government came with a transitional mechanism by introducing PTL.

50 It was enquired why the Commission should bore itself with the position of compromise the PTL. This position is distorted and there should be restoration to the kingdoms for kingships.

51 Functions of the PTL were questioned and whether the position is not competing with the King. It was highlighted that the title of the position is a foreign concept. The position is not reporting to anyone and according to the legislation it is below the King/Queen.

52 A concern was raised on the movements of TLs to other authorities caused by demarcation processes and some communities have taken government to court.

53 It was enquired why TLs should be entitled to pension benefits while they don't retire. The Commission should look at their tools of trade, sitting allowances as well as accommodation.

Envisaged Review for the remuneration of TLs

54 Dr Mbabane indicated that the purpose of the review is to conduct a detailed remuneration review of the practices and principles that are used to determine the remuneration of Traditional Leadership positions.

55 Dr Mbabane mentioned that the sector- and status-appropriate recommendations on practices and principles that inform the remuneration determination process/ framework will be made by the Commission.

- 56 It was further indicated that the Commission will probe into hierarchical levels of all traditional leadership structures and positions (nationally, provincially and locally) as well as the related duties and functions.
- 57 The Commission will consider the challenges with current system of remuneration in relation to traditional leadership positions and the specific benefits.
- 58 The technicalities of the envisaged review were indicated as follows:
- Required expertise
 - Experience (relevant; appropriate; demonstrable)
 - Project management issues and arrangements
 - Terms of Reference
 - Time frames (6 months after official briefing)

Discussions

- 59 The MEC of Mpumalanga advised that the TLs matter is a thorny issue and enquired whether there is a commitment from the Commission to address this? Why the request for TLs job descriptions and these correlate with desirable expectations?
- 60 The Deputy Minister enquired why the job descriptions of TLs are required while the position is inherited. An example of England was made where it was indicated that the Queen has no job description.
- 61 There should be immediate solution because TLs are faced with realities on the ground. Limited thinking is not required in dealing with this matter and previously TLs were self-sufficient and their land and livestock were dispossessed. The TLs should be proud about their national identity
- 62 The Commission responded by advising that the duties and functions of TLs should be scientifically evaluated and their remuneration will be informed by this process. The information gathered will assist the Commission in refining its ToR. The job description will assist in justifying when questions are asked regarding the remuneration as this will assist in fulfilling legislative imperatives.
- 63 It was enquired why there is no parity amongst all POBs. TLs were given a raw deal during the previous remuneration review, only basic salary was provided instead of total remuneration.
- 64 It was requested that the recommendations for 2016/2017 should include the concerns of TLs and also section 8(1) (d) and tools of trade especially the car allowance previously recommended by the Commission should be considered.
- 65 It was emphasized that the previous government used to support the TLs compared with the current government that does not support this institution.

66 The Commission acknowledged that this is a complicated sector; change is required through economic evaluation and updated processes to make thorough recommendations.

Assessment of the mandate of the Commission on traditional leadership

67 Former Commissioners, Prof Pearl Sithole and Mr Gampi Matheba, presented during the session. The purpose was to advance the mandate of the Commission and the remuneration framework of the POBs. This emanated from lack of base for the framework, and perhaps a feeling that the Commission is partisan in advancing the framework.

68 It was indicated that perhaps a proper review of the Commission's Act informed by clear definition of PoBs, clear definition of categories and identification of scope and referral powers should be persuaded.

69 It was mentioned that this was not to deter from the intention of the Constitution that the focus be on remuneration; but it is a recognition that a lot of work needs to be done before remunerative recommendations are made – especially on Traditional Leadership. The mandate of the Commission is provided for by Section 219 of the Constitution.

70 Some of the issues raised by TLs have not even been recognized; they are requesting the Commission intervention in solving these issues. These issues were relating to the tools of trade, pensions, medical aid, salaries (not just stipends!) as well as the scope for part-time leadership.

71 It was indicated that proper research behind the formulation of job descriptions and the conceptualization of their contribution to society was necessary.

72 It was specified that there were unresolved issues – that call for inter-referrals – such as levels of recognition of traditional leadership and the need for a uniform remunerative framework as well as the scale and scope of work issues have not been finalized.

73 It was indicated that some of traditional leaders have not even been recognized; they are looking to solve this problem first and yet to ask the Commission for interfere on fair remuneration is not feasible.

74 Some of these issues implied a system of performance management. The question that needs to be asked is whether this is applicable?

75 In conclusion, the following were raised with regard to the Commission's mandate and the way forward thereof:

- Is the review of the Commission's Act in order? There may just be a lot of work besides annual remuneration pronouncements
- Should the work of conceptualizing PoBs not be done speedily?
- Should the consideration of the inclusion of Constitutional Bodies not be done as part of proper conceptualization of PoBs and their categories?

- If indeed it is found that a Commission has a lot of work to do, should it not establish a decent (i.e. well-resourced) research unit?

Inter-governmental support towards traditional leadership structures

76 Dr. Nwaila commenced his presentation by referring to section 20 of Traditional Leadership and Governance Framework Act of 2003, "national or a provincial government" may through legislative or other measures, provide a role for traditional councils or traditional leaders.

77 Furthermore, provincial Cogta departments are expected to provide support to the institution of Traditional Leadership.

78 It was mentioned that is well known that Traditional Leaders are revered for who they are and what they represent and not simply on the basis of what they do. In this context, how do we determine what TLs do and whether their roles are commensurate with their remuneration?

79 It was indicated that it would be prudent to examine the current reality, to look at the gaps and to propose appropriate remedies as part of addressing inconsistencies within the sector and in pursuit of nation building. The Department has observed over the years that there has been inconsistent application of benefits and allowances for TLs as "public office bearers". For example, the 2009 medical aid determination for TLs (Government Employees Medical Aid Scheme). This determination continues to cause unhappiness within the sector.

80 In order to get to the heart of the journey traversed by TLs in the country, the following problem statements were explored:

- In terms of Section 219(1)(a) of the Constitution of the Republic of South Africa, 1996, it classifies TLs as "persons holding public office";
- Generally, there seems to be poor support for TLs and their structures in South Africa (e.g. traditional councils, local houses which constitute the backbone of the traditional leadership institution);
- The pertinent question pertaining to support for the institution is: "what do we base TLs' remuneration on?" Is it on functions listed in various pieces of legislation? Is it on what they do in accordance with pieces of legislation regulating the sector? Several studies have shown that traditional leaders are revered for who they are and what they represent, but not on what they do;
- In the past 22 years, there has never been a robust discourse on the location, place and relevance of traditional leadership in a democratic state; the Department have just continued with what is referred to as "maintenance agenda" to a point where some republicans continue to argue that Government is sustaining a dying institution by providing remuneration, benefits, allowances and tools of trade.

81 It was mentioned that historically, the appointment of a person to a traditional leadership position was determined by custom and customary law. Each traditional community

knew who was eligible to be a successor, based on the history, norms, values and the customary law of that particular traditional community.

82 It was indicated that each traditional community was independent of others and managed its own affairs under its own system of government and jurisdiction. TLs administered the affairs of their communities through customary structures.

83 It was further mentioned that historically, TLs were not supported in monetary terms. They occupied a position of unique privilege and moral authority. They enjoyed certain entitlements, for example, the entitlement to the first fruits, free labour from their communities and large tracts of land. A traditional leader was a repository of wealth and a dispenser of gifts. TLs' exalted status was reflected in the ceremonial surrounding and in the obligations of his "tribesmen" towards him. A TL's most important source of wealth was cattle.

84 Following the 1994 elections, the new government embarked on a course to transform the South African state. Government was presented with the challenge of defining the place and role of the institution of traditional leadership in the new system of governance.

85 The White Paper on Traditional Leadership and Governance of 2003, called upon the institution of traditional leadership to embrace democracy and the principles of equality, efficient governance, transparency and accountability.

86 In terms of the current legislative framework, the following traditional leadership positions are recognized (for the first time since 1927, the dignity of our traditional leaders is restored:

- Kings/deemed Kings or Queens
- Principal traditional leaders- transitional position
- Senior traditional leaders
- Headmen/Headwomen

87 Currently, legislation provides for the establishment of the following traditional leadership structures:

- National House of Traditional Leaders (NHTL)
- Provincial houses of traditional leaders (PHTLs)
- Local houses of traditional leaders (LHTLs)
- Kingship or Queenship councils (not yet established)
- Principal traditional councils (not yet established)
- Traditional councils (TCs)
- Traditional sub-councils (not yet established)

Outstanding issues:

88 By way of Presidential Notice No 53 of 12 November 2008 the President determined benefits for traditional leaders (paramount chiefs and senior traditional leaders) and

members of the NHTL and PHTL. These benefits were amended by way of Notice No 85 of 02 December 2009 to be as follows:

- Risk benefit
- Medical Aid
- Pension benefit

89 On 15 July 2013 the Department met with National Treasury to discuss the Pension Benefit Structure Report. The Department proposed a pension benefit structure consisting of an employer contribution of 10% without a risk benefit. National Treasury supported the proposal. To date, the risk benefit has not yet been implemented. A joint meeting comprising Treasury, Commission and the Department was held in June 2016 to revisit this issue. It was proposed that there is a need to consider a once-off gratuity payment to close this protracted issue.

90 Currently, benefits only cover certain categories of traditional leaders and members of houses of traditional leaders. The Department is of the view that benefits should cover all traditional leaders as they are all remunerated as POBs. The qualifying criteria should be that a person is a TL and not in certain circumstances membership of houses of TLs.

91 The current remuneration model does not take into account the performance of TLs and members of houses, whether good or poor performance. There is also no incentive to reward good performance (performance bonus system). The pre-1994 model ensured that all TLs qualified for remuneration benefits.

92 A submission was made that the review should consider the ideal remuneration model (salaries, allowances, benefits and tools of trade) catering for remuneration of all levels of TLs (mindful of affordability and cost effectiveness).

93 Furthermore, it was indicated that the Department has developed a draft funeral policy, if need be, will be submitted to the Commission for further consideration to deal with categorization of funerals and proposed amounts).

94 In conclusion, Given the fact that there are only 7,970 recognized traditional leaders in South Africa, it is proposed that the Commission considers the following seven recommendations in the spirit of building unity and social cohesion:

- To assist the Department and National Treasury to conclude the previous benefits that have not yet been implemented due to various reasons (pension, medical aid and risk (death and funeral) benefits)
- The Commission has to prioritize recommendations on sitting allowances of non-traditional leader members of kings councils, principal traditional leaders councils, traditional councils and sub-traditional councils to maintain consistency within the sector (the Khoisan leadership structures will be included after the promulgation of the TKLB)
- The Commission has to consider withdrawing the 2009 pension determination and explore a more ideal model for traditional leaders given the fact that they do not retire

- Traditional leaders are no longer allowed to collect levies in the new democratic SA, they are solely dependent on government support- therefore, and the Department is of the view that benefits should cover all traditional leaders as they are all remunerated as Public Office Bearers. This will create unity and social cohesion
- The Commission to consider the 2011 headmen/women recommendations to deal with KZN situation, especially to allow variation
- Commission to consider full-time status for national and provincial houses of traditional leaders to promote uniformity of national and provincial houses with clear roles and responsibilities linked to accountability mechanisms-it seems to me that this option maybe cost effective
- To consider making recommendations and determination of remuneration, benefits, allowances including tools of trade for local houses of traditional leaders, which consist of structures closest to the people
- TLs are expected to participate in municipal council meetings as part of their legislated role. In some provinces, they are not paid a stipend while municipal councillors are paid for attending such meetings

Panel discussions:

- 95 It was enquired whether the Commission is envisaging the remuneration in terms of productivity. The Commission was requested to explore other means of support instead of cash remuneration for TLs. TL institutions are developmental and their assets must be sustainable in order to take the institution forward. It was further enquired what went wrong for government to establish new structures within the sector.
- 96 It was also enquired whether the amendment of the legislation will benefit the Commission? It was advised that the Municipal Councillors are being empowered so the same should apply to TLs. TLs are recognized as POBs in terms of legislation and this has raised some expectations.
- 97 It was enquired why HR processes are required in dealing with TLs. In response it was suggested that these processes empower the Commission for implementing and monitoring implementation of its mandate.
- 98 It was recommended that the Commission should engage in a strategic session in an attempt to deal with issues raised by POBs.
- 99 A concern was raised that some STLs were elevated while they did not have Kingship and the salary gaps within the sector undermined the TLs status.

Closing by the Minister of Cogta Mr D van Rooyen

- 100 The Deputy Chairperson, Ms Ramagaga, introduced the Minister. The Minister expressed his gratitude in sharing the occasion with the conference's delegation. He indicated that he was looking forward to obtaining a report on the outcomes of this conference from the DG. The Executive Lekgotla, in particular, should enlighten the conference on the manner in which TLs wish to move the institution of Traditional Leadership forward.
- 101 He mentioned that Traditional Leadership is a centuries' old institution and that to this day many South Africans, in both rural and urban areas, still pay their allegiance to this institution. He specified that the recognition afforded to traditional leadership in

Chapter 12 of the Constitution was an acknowledgement of the presence and the continued support that this institution enjoys among most South Africans.

- 102 Historically, TLs at all levels were not remunerated. However, they enjoyed certain entitlements, for example, the entitlement to the first fruits, free labour from their communities, large tracts of land, etc. Only after the promulgation of the Black Authorities Act of 1951 were TLs remunerated.
- 103 The Minister indicated that to ensure uniformity regarding remuneration of TLs government promulgated the Remuneration of Traditional Leaders Act, 1995 (Act No. 29 of 1995) in terms of which the President after consultation with the then Council of Traditional Leaders could determine the remuneration and allowances of the different categories of TLs. As far as could be established, no determination was made in terms of this law.
- 104 It was only after the promulgation of Act No. 20 of 1997, that all TLs at the level of Kings/Paramount Chiefs, Chiefs and members of NHTL and PHTL received remuneration based on uniform scales determined by the President.
- 105 The first determination of salaries, allowances and benefits of TLs and members of houses of TLs by the President was done in 2008.

Progress and challenges regarding implementation of benefits

Medical Aid

- 106 The Department resolved the participation of TLs in GEMS with the Department of Public Service and Administration and GEMS. The PERSAL codes allowing TLs to enrol with GEMS were unblocked with effect from 1 April 2014. The guidelines and contribution rates applicable to the medical aid fund for officials apply. It was announced at Technical MINMEC on 07 February 2014 and by way of letters to all houses of TLs.

Pension benefit

- 107 The Minister indicated that to date this benefit has not been implemented. He mentioned that the Commission informed the Department that they advised the Minister of Finance as the Principal Employer in terms of the POBPF rules about the non-implementation of the President's determination as a result of the omission of TLs from the definition in the rules.

Panel discussions:

- 108 Furthermore, the Commission also requested the Director-General of National Treasury to provide the Commission with a report on the status of the pension benefit design for traditional leaders that was conducted by National Treasury.
- 109 It was indicated that on 15 July 2013 the Department met with National Treasury to discuss the Pension Benefit Structure Report commissioned by National Treasury. After having considered the said report, the Department proposed a pension benefit structure consisting of an employer contribution of 10% without a risk benefit. Treasury supported the proposal.

Risk benefit

- 110 To date the risk benefit has not been implemented. The Department wrote to the Remuneration Commission and proposed that consideration be given to amend both the recommendations of the Remuneration Commission and the Presidential Proclamation to provide that the identified TLs are offered risk benefits.
- 111 It was emphasized that currently the benefits only cover certain categories of TLs and members of houses of TLs. The Department is of the view that benefits should cover all TLs as they are all remunerated as POBs. The qualifying criteria should be that a person is a TL and not in certain circumstances membership of houses of TLs. The remuneration model (salaries, allowances and benefits) should endeavour to afford remuneration to all levels of TLs.
- 112 Furthermore, the current remuneration model does not take into account the performance of TLs and members of houses, whether good or poor performance. There is also no incentive to reward good performance (performance bonus system). The pre-1994 model also ensured that all TLs qualified for remuneration benefits.
- 113 In conclusion, the Minister indicated that the Ministry of COGTA have been determined to acknowledge the role that the institution of traditional leadership continues to play in our society. Furthermore, he indicated that the Ministry will consider the issues and recommendations raised at this conference, with a view to resolving them speedily.

Vote of thanks and closure

- 114 Dr Sibandze thanked the Minister, Deputy Minister, MECs, leadership of both National and Provincial Houses of Traditional Leaders and all conference delegates.