

## Repeating the failures of the Traditional Leadership and Governance Framework Act (“the Framework Act”)

### THE PROMISE OF WHAT THE FRAMEWORK ACT WOULD DO:

2000 Discussion Document of Ministry of Provincial and Local Government: “Pre-colonially, traditional leaders ruled according to **the principles of African democracy and accountability**...Chieftainship came to be reduced to ‘a public office created by statute’. That is the reversal of the position of the chief in traditional society in **which the role of the chief was to represent his people according to the dictates of customary practice**”. The Framework Act would set that right.

2003 White Paper on Traditional Leadership: “recognised levels of traditional leaders should be **based on custom and customary law; and levels which were introduced as a result of colonial, apartheid and homeland laws....should be abolished** [...] the legitimacy of those occupying positions within the institutions should be beyond reproach...When traditional leaders have to be identified and designated as such, the State should play a limited role which is guided by the culture and tradition of the relevant community”.

Principle	Framework Act	Experience thus far?	TKLB
Democracy	Preamble: <i>traditional leadership must be transformed to be in harmony with democratic governance and the values of an open and democratic society</i>	Cala Reserve community used this wording of the Framework Act to argue for their customary right to elect their headman.	All references to democratisation of traditional leadership and systems REMOVED.
Accountability	S4(3): a traditional council must meet at least once a year with its community to give account of its activities , finances, levies received.	Little or no evidence of such meetings taking place and that communities feel informed and accounted to. No oversight. No mechanism for complaint.	S20(3)(b): identical provision to meet once a year to give account.
Accountability	Removal of trad leader: ONLY the royal family may decide to do so. No consultation required.	No community has been able to remove a traditional leader.	S9: ‘removal’ is now called ‘withdrawal’ and can still only be initiated by Royal Family.
Accountability	Complaint based on Code of Conduct (‘CoC’) to Framework Act (Schedule 1): provided for in provincial legislation.	In terms of provincial legislation, misconduct can be raised by: Limpopo – Traditional Council (TC) EC – TC/Royal Family (RF) NW – Premier	Provides that only member of provincial house, local house or TC may raise breach of CoC and ask for investigation. Moves to Premier. COMMUNITY MEMBER HAS NO

		Mpumalanga – Premier/RF KZN – Removal of leader based on breach of CoC possible, but only by Royal Structures. NONE OF THE LAWS PROVIDES FOR COMMUNITY MEMBERS TO COMPLAIN ABOUT THEIR LEADERS. No community has been able to remove a traditional leader.	MECHANISM.
Transitional provisions	S 28: any leader, tribe or authority existent in 2003 are deemed to be leaders, communities and TCs under the Framework Act provided that they comply with s3(2) within 7 years.	This provision was meant to operate alongside the two mechanisms below: the Commission would remove illegitimate traditional leaders while the elections would democratise the structures. As we see below, both mechanisms FAILED. As a result, the promise to “abolish” homeland and apartheid leaders and practices has been BROKEN.	S 70: repeats the transitional provision, now requiring TCs to comply within 1 year whereafter the Premier may take steps to ensure that they comply.
Mechanisms of transformation: traditional councils	S3(2): Traditional councils must have a third women; 60% members selected by the senior traditional leader; 40% democratically elected for 5-year terms.	Elections problems: in Limpopo these have not happened in 13 years; in other provinces elections held but not free, fair and participatory; not held every 5 years; traditional councils often perceived as puppets of senior traditional leader.	S16: Repeats the mechanism with simply more detail as to when elections should take place. Ignores the fact that this mechanism has failed dismally in democratising traditional governance.
Mechanism for transformation: illegitimate leaders	S21-26: Commission on disputes and claims (later joined by provincial committees).	These committees have been plagued by political interference and extreme delays and currently lack all legitimacy. Most Commission/committee decisions challenged are overturned.	S 51-58
Audits	S4 required provincial legislation to provide for auditing of financial statements, keeping records, disclosing gifts.	Some provincial legislation complied, but implementation weak: NW no accounts audited; in Limpopo PAIA requests for records of TCs provided nothing.	S20: requires TCs to keep proper records, have its financial statements audited by AG and submit to the Premier (as previous NW Act provided – no NW TCs complied).