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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TRADITIONAL AFFAIRS

NO. 4397 **22 February 2024**

TRADITIONAL AND KHOI-SAN LEADERSHIP ACT, 2019: FORMULA FOR DETERMINATION OF NUMBER OF MEMBERS OF A TRADITIONAL COUNCIL

Under the powers vested in me by section 16(2)*(a)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), I, Thembisile Nkadimeng, Minister for Cooperative Governance and Traditional Affairs, hereby replace the formula for the determination of the number of members of a traditional council issued under Government Notice No. 1726 as published in Government Gazette No. 45859 of 4 February 2022, with the formula set out in the Schedule hereto.

MS THEMBISILE NKADIMENG
MINISTER FOR COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS
DATE: 13/02/2024

SCHEDULE

FORMULA FOR DETERMINATION OF NUMBER OF MEMBERS OF A TRADITIONAL COUNCIL

The formula for determining the number of members of a traditional council as contemplated in section 16(2)*(a)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) (hereinafter referred to as the Act), is as follows:

INPUTS		**OUTPUTS**					
Number of legally recognised headmen/ headwomen	% of community members within the selected component	Total number of traditional council members	**Number of selected members of a traditional council (60% component)**				**Number of elected members of a traditional council (40% component)**
			Senior traditional leader	Selected headmen/ headwomen	Selected community members	Total number of members selected	
	a		**b**				
X	**20%**	**y**	**1**	**h**	**c**	**z**	**e**

Nomenclature
x = Number of legally recognised headmen/headwomen
y = Total number of members of a traditional council
b = Number of senior traditional leaders
z = Total Number of members selected by the STL
c = Number of community Members selected by the STL
h = Number of headmen/headwomen selected by the STL
e = Total Number of elected members
a = percentage of selected community members within the 60% selected component of a council

For:

0 ≤ x ≤ 7; y = 18
8 ≤ x ≤ 14; y = 24
15 ≤ x ≤ 24; y = 32
25 ≤ x ≤ 50; y = 40
x ≥ 50; y = 50

z = 0.6*y
c = (z-1)*0.2
h = (z-1)*(1-0.2)
e = y-z

See application below.

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1. APPLICATION OF FORMULA

1.1. The sole determining factor for the number of members of a traditional council is the number of legally recognised headmen/headwomen under a recognised senior traditional leader of the traditional community concerned.

1.2. The number of members of a traditional council is as follows:

Number of recognised headmen/ headwomen	Total Number of members of a Traditional Council
7 or less	18
8-14	24
15-24	32
25-50	40
51 and more	50

1.3. Members of a traditional council comprise 60% selected members (60% selected component), and 40% elected members (40% elected component). In terms of the Act, the 60% selected component comprises traditional leaders (recognised senior traditional leader and headmen/headwomen) and community members. For the purposes of the 40% elected component of a traditional council, any member of the relevant traditional community other than a member who forms part of the 60% selected component, may be nominated for election.

1.4. Eighty percent (80%) of the 60% selected component are traditional leaders (i.e., the senior traditional leader and legally recognised headmen/ headwomen), one of which is the relevant senior traditional leader, and the remainder are headmen/headwomen. Should any of the calculations for the selected component result in a decimal, it should be rounded off upwards if the decimal is .5 or above and rounded off downwards should the decimal be lower than .5.

1.5. The composition of the 60% selected members is therefore as follows:

a) The recognised senior traditional leader who is an *ex officio* member of the traditional council;
b) community members comprising 20% of the total number of selected members (thus 20% of the 60% selected component); and
c) as many legally recognised headmen/headwomen as required to reach the total number of selected members: Provided that—

i. in instances where there are more legally recognised headmen/headwomen than the number required to serve as selected members, the relevant senior traditional leader must select the required number from amongst the recognised headmen/ headwomen. In this instance a rotation approach must be adopted for the different 5-year terms of the traditional councils to afford each

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headman or headwoman an opportunity to serve as a traditional council member. Therefore, in all instances where, based on the total number of legally recognised headmen and headwomen within a particular traditional community, it is possible to implement a rotation schedule, no selected headman or headwoman may serve consecutive terms;

ii. in instances where there are less recognised headmen/headwomen than the number required to serve as selected members, all recognised headmen/headwomen under the senior traditional leader concerned will be selected and, notwithstanding paragraphs 1.3, 1.4 and 1.6, as many community members as may be required to reach the total number of selected members will be selected; and

iii. in instances where there are no recognised headmen/headwomen under the senior traditional leader, the selected members will consist of the senior traditional leader and, notwithstanding paragraphs 1.3, 1.4 and 1.6, as many community members as may be required to reach the total number of selected members will be selected.

1.6. Twenty percent (20%) of the 60% selected component are community members. Should any of the calculations for the number of selected community members result in a decimal, it should be rounded off upwards if the decimal is .5 or above and rounded off downwards if the decimal is lower than .5.

1.7. The selection of community members and headmen/headwomen must be done by the recognised senior traditional leader.

1.8. Before the selection of the 60% component takes place, the senior traditional leader must request the relevant royal family to designate, from amongst its members, a forum of not more than five members to assist such senior traditional leader with the selection of members of the relevant traditional council as prescribed by the Act. The selection of members by the senior traditional leader is subject to the concurrence of such forum. If there is no concurrence, the provisions of section 16(3)*(c)* of the Act shall apply.

1.9. During the selection process, the senior traditional leader and the forum are encouraged to select persons who represent the interests of the youth and persons with disabilities of that community: Provided that for the purposes of this formula “youth” means persons who are at least 18 years old but not older than 35.

1.10. During the selection process the senior traditional leader and the forum must ensure that at least one third of the selected members of the particular traditional council are women to comply with section 16(2)*(b)* of the Act.

1.11. The selection of the 60% component must be finalised before the process relating to the 40% election component commences. In this regard, the names of such selected members must be made public within 14 days from the date of such selection: Provided that the election process of the 40% elected

component of a traditional council must take place within 21 days from the date on which the names of the selected members have been made public.

1.12. The process of electing the 40% component of a traditional council should be done in terms of section 21 of the Act. During the election process, the community is encouraged to elect persons who represent the interests of the youth and persons with disabilities of that community.

1.13. As prescribed by section 16(2)*(b)* of the Act, at least one third of the members of a traditional council must be women, and if this requirement cannot be met in any instance, the Premier may determine a lower threshold for the traditional council concerned, therefore: -

a) during the selection of the 60% component of a traditional council, senior traditional leader and the Forum must ensure that at least one third of the selected members are women; and
b) during the election of the 40% component of a traditional council, the community must ensure that at least one third of the elected members are women.

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