



Local Government Brief: 08/2012

Local Government Briefs are monthly electronic updates for municipalities on critical areas of law, policy, facts and data affecting the sector.

Challenges regarding the participation of Traditional Leaders in Municipal Councils (December 2013)

1. PURPOSE

This briefing highlights challenges regarding the participation of Traditional Leaders in Municipal Councils and to make recommendations in this regard so as to ensure effective, responsive and accountable local governance for communities.

2. BACKGROUND

The Local Government: Municipal Structures Act, 1998, provides for the participation of recognised Traditional Leaders in municipal councils. In so participating they are bound by the Code of Conduct for Councillors, but do not have voting rights and do not become councillors. The fact that traditional leaders participate in rural and urban councils creates its own dynamics and municipalities often require assistance in this regard.

COGTA identified the need for a summit between Traditional Leaders and Municipal Councillors towards the end of 2010, but it was then postponed due to the then planned local government elections. It was felt that the summit should happen once new municipal leaders have been elected. Since the May 2011 election the initiative has not been continued.

3. DISCUSSION

Since its fusion into the democratic local government system, the role and place of the institution of traditional leadership in municipalities has been fraught with tension, confusion and contradictory practices. Indeed, SALGA regularly receives enquiries from municipalities on the participation and payment of Traditional Leaders in municipal councils.

Some of the most frequent matters raised include the following:

1. What is the legal status of traditional leaders in council in general and their actual role and do they have a right to vote.

Section 81 of Structures Act provides for a maximum of 20 percent representation of traditional leaders in municipal council meetings, where there are traditional leaders in the municipality. Section 5 of the Framework Act further provides for partnerships to be entered into between municipalities and traditional councils.

Traditional leaders may participate in proceedings of the relevant Council (as gazetted by the MEC) and must have the opportunity to express a view on matters directly affecting the area of the traditional authority. Traditional leaders participate in their capacity as representatives of their traditional communities. The municipality may not adopt any by-law affecting a traditional community unless its traditional leaders have been consulted.

In addition to the relevant Local Government legislation, section 4 of Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003) outlines the functions of traditional councils and these include the following:

- Supporting the municipality in the identification of the needs of the community; facilitating the involvement of the traditional community in the development or amendment of the IDP of the municipality in which the community resides and participating in the development programmes of the municipality.

Traditional leaders are not members of Council and as such have no voting powers. Traditional Leaders are representatives of their communities in Council but are not members thereof. They can only participate in debates on matters that affect their traditional communities.

In comparable terms, it is similar to Organised Local Government's participation in the national Council of Provinces (NCOP). Councillors participate in the NCOP as representatives of LG in order to ensure that LG views are considered in the policy and legislative process. They participate when LG matters are discussed, but do not vote. Deployed councillors are not members of Parliament (MPs) and receive no remuneration or allowances from the NCOP. SALGA covers our representatives' travel and accommodation costs.

The reason often cited for the non-participation of traditional leaders in municipal councils is the lack of a determination by the relevant MEC's of which traditional leaders must participate in the councils and what roles they must play. In cases where traditional

leaders participate in municipalities, concerns have been raised about the lack of clarity on roles. However, Local Houses of traditional leaders have been established and since they are the formal structures of traditional leadership at local level. They are expected to address the concerns of traditional communities within the district (or municipality). Effective involvement of traditional leaders in programs of municipalities dealing with development and service delivery projects is also (therefore) of paramount importance.

2. Are Traditional Leaders entitled to a salary like other councilors? Most are being paid a sitting allowance per meeting and a cellphone.

Councillors are public office bearers and are remunerated by municipalities in accordance with the legislative framework. Councillors are public office bearers; they do not have conditions of service and are not employees of municipalities.

Traditional leaders are members of the local house and are representatives of their traditional communities in Council, but are not Council members or employees of the municipality. Traditional leaders participating in the municipality are not councillors and as such are not entitled to remuneration applicable to councilors as public office bearers.

As far as allowances are concerned, a different dispensation, totally removed from local government applies to Traditional Leaders. As for allowances paid by Municipalities , section 81(5)(b) of the Structures Act provides that a traditional leader who participates in the proceedings of a municipal council is entitled to the payment of out of pocket expenses in respect of such participation. It further provides that a municipal council must determine the criteria for, and calculation of, the out of pocket expenses and that out of pocket expenses must be paid from the budget of the municipality in question.

As indicated above, no legislative framework exists for the payment of allowances (let alone salaries) to traditional leaders. There is no legal basis for Councils to be paying salaries to traditional leaders. Municipalities doing so will have accountability challenges in terms of the Municipal Finance Management Act (2003), which applies to all Local Government expenditure.

It is clear from the aforesaid that greater guidance needs to be provided to municipalities on the participation of traditional leaders and how they can contribute to developmental local government. It is proposed that based on the discussion points above, SALGA develops a guideline document on the participation of traditional leaders in municipalities. It can also be considered by SALGA to initiate a summit between traditional leaders and councilors.