INDIGENOUS PROFESSIONS OF SOUTHERN AFRICA's
SUBMISSION TO THE DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS (COGTA)
REGARDING THE TRADITIONAL AND KHOI-SAN LEADERSHIP ACT AND THE ROLE OF TRADITIONAL AUTHORITY

These submissions are endorsed by:

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1. Introduction

1.1 We thank the Department of Cooperative Governance and Traditional Affairs ("the Department" or "CoGTA") for the opportunity to submit comments on the **Traditional and Khoi-San Leadership Act ("the TKLA")**. Our contributions rest on South Africa's constitutional vision of a society anchored in human dignity, equality, and freedom, as outlined in the Preamble and sections 1(a) and 7 of the Constitution.

1.2 This submission highlights the historical injustices endured by Indigenous communities that practise African Indigenous Knowledge Systems (AIKS) and offers proposals to strengthen, clarify, and improve the legal and public policy frameworks governing traditional authority. We invoke:

- ***Section 235 of the Constitution*** (the right of Indigenous communities to self-determination),
- ***Section 195*** on public administration, read with *Doctors for Life International v Speaker of the National Assembly [2006] ZACC 11* (the requirement of meaningful public participation), and
- ***Section 31 of the Constitution*** (the right to cultural practices and institutions consistent with constitutional values).

These provisions demonstrate that a robust, dignified, and context-specific TKLA should recognise:

1. ***Self-determination*** for Indigenous communities,
2. ***Meaningful participation*** in legislative and policy processes, and
3. ***The constitutional standing*** of cultural institutions vital to local identity and cohesion.

1.3 Despite strides made in the democratic era, certain provisions in the TKLA do not fully remedy the legacy of colonialism and apartheid or empower traditional authority in a manner consistent with our founding constitutional values. In this submission, we emphasise that properly recognising the social, cultural, and economic roles of traditional authority is integral to upholding equality, protecting dignity, and safeguarding freedom for Indigenous communities.

1.4 The United Nations Declaration on the Rights of Indigenous Peoples, Article 12, further emphasizes the importance of cultural identity by stating that Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect, and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.

1.5 We use the terms "traditional authority" and "indigenous authority" interchangeably, to underscore the principle that indigeneity constitutes the very basis of tradition. This articulation stresses that traditional authority is by its nature rooted in indigenous identity and lived cultural

practices, rather than being an abstract governance structure imposed from outside. We use the terms "traditional authority" and "indigenous authority" interchangeably, to underscore the principle that indigeneity constitutes the very basis of tradition. This articulation stresses that traditional authority is by its nature rooted in indigenous identity and lived cultural practices, rather than being an abstract governance structure imposed from outside.

We also note our reservations on the insistence by the government to continue to use the term "traditional" when referring to us as royal leaders because the term "traditional" bears connotations of something that lives in the past and that possibly does not have much relevance today.

2. Why addressing the injustices of the past remains top of the agenda

2.1 **Centrality of past injustices**
Although South Africa has been governed under a constitutional democracy for more than three decades, the remnants of colonialism and apartheid continue to disadvantage Indigenous communities, particularly those who live under or rely on traditional authorities and AIKS. Colonial policies severely disrupted the leadership structures, customs, and economies of these communities. Indigenous norms and institutions were subordinated to Western governance models, and some remain marginalised to this day.

2.2 **Constitutional imperatives**
Section 1(a) of the Constitution provides that the Republic of South Africa is founded on the values of human dignity, equality, and the advancement of human rights and freedoms. For Indigenous South Africans who base their lives, governance, and dispute resolution on customary norms, the ongoing failure to redress historical injustices undermines these founding values. A law that ignores or diminishes centuries-old leadership structures or denies us equitable resources effectively erodes our dignity, deepening existing inequalities.

2.3 **Relevance to the TKLA**
The purpose of the TKLA was to formally recognise Khoi-San communities and to clarify the powers, roles, and composition of traditional councils and leadership structures. However, it lacks effective provisions for the restoration of dignity and for removing the colonial distortions that remain embedded in many of the traditional governance frameworks. The structural system of government which deals with issues relating to iinkosi has been squarely based on the repressive and degrading principles of the colonial government, as evidenced by the post-apartheid government's retention of the three-tier system of ubukhosi, a colonial invention. Colonial governments created Tribal Councils by degrading and demoting legitimate iinkosi, only for the post-94 democratic government to reinforce this by simply changing the name to Traditional Councils. Further evidence of the colonial distortions in traditional governance frameworks is the invention of the level of "Headman" during the time of colonial Governor Maitland in 1846, documented in British Parliamentary Paper 786 of 1847, page 196, Maitland – Grey 26 August 1846.

2.4 **Moral and legal rationale**

It is, therefore, both a moral and a constitutional imperative for the legislature to ensure that any final law regulating traditional governance overtly tackles the historical injustices perpetuated by colonial policies (see Mvenene, J. (2023) 'The waning fortunes of traditional leadership in South Africa: From pre-colonial to apartheid periods', *New Contree*, 90). True restitution and reconciliation hinge on more than superficial recognition: they require comprehensive frameworks that empower Indigenous leaders and communities—backed by adequate resources and grounded in the principles of equality and self-determination. Such an approach will help realise a truly inclusive constitutional order in which historic wrongs are addressed and the voices of Indigenous communities are amplified rather than silenced.

3. Understanding the historical context

3.1 **Colonial frameworks and distortion of traditional Authority**

From the 19th century onward, colonial governments systematically eroded or replaced Indigenous governance systems with Roman-Dutch and English legal frameworks (Mvenene 2023, 2–4). In the Eastern Cape, for instance, colonial administrators introduced "headmen" or "paramount chiefs," often ignoring or invalidating local genealogical lines (Mvenene 2023, 3–5). This reorganisation served colonial interests, disenfranchising legitimate communal leaders and forcing communities to comply with newly created, "approved" tribal structures.

Historically, African societies had already refined their own complex leadership hierarchies—iKumkani (king), iNkosi (chief), and various support councils. However, colonial policies not only diluted their authority but also fractured the relationship between leaders and their subjects by imposing faux titles like "paramount chiefs" for individuals more loyal to the colonial state. Such distortions weakened communal governance and sowed confusion about legitimate succession lines—an issue that persists even today.

3.2 **Legacy of Colonialism and Apartheid**

Under Apartheid, these distortions became institutionalised via Bantustan or "homeland" administrations—a move that Mvenene (2023, 5–7) cites as among the most deliberate attacks on the authentic local authority. This view is shared by others, like Prof Jeff Peires. Whereas genealogical seniority and communal consensus previously legitimised leadership, the Apartheid regime installed councils primarily to serve the political ends of "separate development." In many cases, these councils stood as *de facto* arms of the state, losing credibility among residents who viewed them as tools for subjugation rather than avenues for genuine local decision-making (Mvenene 2023, 6–8).

Such manipulations, typically driven by the Bantu Authorities Act (No. 68 of 1951), also facilitated forced labour migration. Traditional leaders who resisted or did not cooperate were removed or sidelined, further eroding the standing of genuine genealogical lines. The result was a breakdown in social cohesion, with communities left confused and divided about who held rightful authority.

3.3 **Consequences for current law and policy**

Despite the democratic transition, many colonial and Apartheid distortions persist in contemporary legislation. For example, certain recognition processes—for "headmen/headwomen" or "senior traditional leaders"—remain tethered to historically imposed structures or policies. This can force communities to navigate parallel systems: one grounded in genealogical custom, the other emanating from remnants of the "Bantu Authorities" era.

The transitional provisions, including the Bantu Authorities Act, former homeland constitutions, and their subsequent amendments, were poorly integrated into the new constitutional framework. As a result, local leadership structures are sometimes shaped by outward political loyalties or historical alliances, rather than by the *bona fide* customary norms that once governed communal life.

3.4 **Path to restoration**

In bridging these historical gaps, the Constitution requires national legislation that not only upholds customary law in line with sections 30–31 but also reaffirms the dignity and autonomy of Indigenous communities (Mvenene 2023, 2). For that reason, the TKLA must explicitly tackle the colonial and Apartheid legacies embedded in current systems, ensuring that genealogical lines and spiritual legitimacy—the bedrock of AIKS—drive local governance.

The preamble of the TKLA and its operative provisions should vigorously address these distortions by elevating an indigenous-led approach. Practically, this involves:

- Uncoupling recognition procedures from past manipulations,
- Introducing remedial mechanisms to rectify genealogical disruptions, and
- Fostering participatory governance that honours spiritual and cultural norms in line with AIKS.

By doing so, national legislation can move beyond formal "recognition" towards meaningful restoration of local agency. Ultimately, this is how the Constitution's promise—of dignity, self-determination, and shared prosperity—finds solid footing in rural communities across South Africa.

4. The dynamics of Traditional Authority

4.1 **The social contract from a South African Indigenous perspective**

In many Indigenous communities, the legitimacy of a ruler—be they *iKumkani* or *iNkosi*—derives from deep communal consensus and spiritual ties to both the land and ancestry. This legitimacy is neither accidental nor fleeting; it is nurtured and reaffirmed across generations through an enduring social contract, anchored in collective practice and custom. Far from being mere "functionaries," Indigenous leaders stand as living symbols of a people's identity, moral order, and historical continuity.

A dual basis of legitimacy

This social contract is legitimised, first and foremost, through ongoing communal participation. Elders and community members uphold systems of counsel and debate—whether in ibhunga, or similar forums—where matters of governance and communal well-being are deliberated. These gatherings reaffirm a leader's role but also weave leadership structures into the lived experiences of community members, making leadership a product of collective affirmation rather than a purely hereditary privilege. In *Shilubana and Others v Nwamitwa [2008] ZACC 9*, the Constitutional Court recognised how living customary law adapts to communal needs over time, signalling that a legitimate Indigenous leader embodies the evolving consensus and moral vision of the entire community.

However, communal consensus alone does not exhaust the social contract. Leaders also maintain spiritual ties—often described as an ancestral mandate—that fortify their authority. By acknowledging that the ancestors are ever-present custodians of morality and prosperity, the community regards the leader as a caretaker of ancestral blessing and guidance. In effect, the social contract merges *ubuntu* (human interdependence) with reverence for the spiritual realm, ensuring that leadership remains attuned to the best interests of both the living and the departed. The regard to spirituality is also a regard to a social contract that bind the original parties to the social contract the current community that is living and regulated by the terms of that original social contract. Like any contract, the terms may change based on the evolving context of the parties, but the essence of the agreement remains that same or it becomes a wholly new contract.

Community rights vs. the Royal family's special prerogatives

Although the entire community takes part in affirming, guiding, and holding leadership accountable, Indigenous custom simultaneously accords distinct powers to the royal family to appoint or replace an *iNkosi* or *iKumkani* within its genealogical line. This duality ensures that hereditary lines of *ubukhosi* remain intact—an element inseparable from many AIKS. Thus, while community members preserve the right to challenge or voice dissatisfaction with a leader's performance, the formal prerogative to confirm or "disappoint" a particular individual as *iNkosi* rests with the royal family. Such authority does not diminish broader communal rights; rather, it protects genealogical continuity and maintains a lineage-based structure that the community recognises as legitimate.

In practice, these distinct prerogatives are not meant to elevate the royal family above communal norms, but to preserve the genealogical core of customary leadership. The community still exerts moral authority to demand that leaders uphold justice and custom. However, the "appointment and disappointment" of individuals within the royal line ensures that genealogical identity—rooted in spiritual and ancestral ties—remains central. Such a distinction between general communal rights and the family's special authority prevents the dilution of lines of *ubukhosi*, even as the social contract continues to rely on widespread participation for its vitality.

This context does not come out clearly enough in the TKLA. Moreover, the structures of traditional authority beckons to the norms and standards set by the colonial and apartheid

authorities in their drive to engineer traditional authority to be subservient to western governance frameworks. It is crucial that the TKLA creates a mechanism to address these injustices and helps to restore the dignity of traditional authority.

Intergenerational continuity and ritual

The tapestry of this Indigenous social contract is reinvigorated through ceremonies, rites of passage, and communal feasts that honour, remember, and celebrate predecessors. Our practices reaffirm social bonds, validate leadership, and perpetuate the rules of collective living from one generation to the next (see T.W. Bennett, *Customary Law in South Africa*, 2004). As a "living customary law," it exhibits remarkable resilience—adapting to new exigencies while holding fast to core principles, including genealogical seniority and communal consensus.

Jurisprudential context: A richer social contract

If we were to borrow from our Western counterparts; from Hobbes and Locke to Rousseau, social contract theory generally insists that legitimate governance rests on the consent of the governed. In AIKS, *ubuntu* broadens this principle: governance is not merely about preventing chaos or protecting individual rights, but about weaving a moral and spiritual tapestry that holds families and clans together in shared identity. Consequently, Indigenous communities do not just "agree" to governance frameworks; rather, they live them—transmitting via oral history, ritual, and practice the obligations and expectations that sustain traditional authority.

Implications for good governance

In practical terms, traditional leaders function as custodians of a dynamic ethical code. Governance is measured not solely by formal outcomes but also by fidelity to tradition, justice, and communal harmony. Should a leader fail to meet these ideals, the community reserves the moral authority to demand accountability or to withdraw support—exercising the social contract's reciprocal dimension. At the same time, the royal family's prerogative to appoint or replace a hereditary leader safeguards the genealogical core of authority, preventing the fragmentation of the lines of *ubukhosi*.

Thus, the social contract in Indigenous communities is a powerful embodiment of dignity, accountability, and collective memory. It profoundly shapes how our communities interpret law, legitimacy, and the very nature of leadership. Any legislative instrument that misunderstands or overlooks these dual features—communal participation and the family's prerogative to preserve genealogical leadership—risks undermining the essence of traditional authority.

4.2 **Custom and the formation of law**

Customary law in South Africa rests on the ongoing interplay of tradition, communal values, and spiritual orientation located in a unique and specific AIKS. It does not arise from one fixed instrument; rather, it matures out of historically rooted social practices that continues to evolve. Repeated affirmation of a shared rule—one deemed fair and beneficial—gradually transforms that practice into binding custom and that custom becomes a standard of evaluating the rightness of certain behaviour. This is when we say we have a customary law.

This being said, tt is also crucial to remember that even the term "Customary Law" in South Africa today is a product of colonialism, coined by British lawyer Lord Hailey in the 1920s as a template for all British colonies. The South African government has not fundamentally reimagined this concept through a process of law reform, instead inheriting it from the apartheid era and continuing its application. This means that the authentic customary law of the people remains largely unexplored. Given that customs are not static but evolve, it is imperative that communities play a central role in defining "customary law" within their context.

4.2.1 *Organic evolution through dialogue and vows*

Customary law is formed and refined through gatherings—often called ibhunga, imbizo, lekgotla, or inkundla—where community members debate issues of public concern. In these settings, diverse voices converge to shape consensus-driven rulings or rules of conduct, mediated by elders who hold the collective history and governance experience to represent the current social contract.

4.2.2 *Spiritual foundations and moral commitment*

Spiritual beliefs often imbue this system with greater moral force. Leaders, or iKumkani and iNkosi, derive their standing not only from lineage but also from a broader trust placed in them to uphold ancestral guidance which echoes the social contract. As a result, the community expects decisions to respect both the sacred traditions and social welfare of current members. This convergence of culture and spirituality cements the community's faith in customary law and fosters internal mechanisms for accountability.

4.2.3 *Why traditional leaders are best positioned to administer and implement customary law*

- ***Localised expertise*:** Because customary law develops from communal experiences and spiritual customs, leaders immersed in those traditions typically have the most nuanced grasp of local norms. They can quickly interpret how new societal challenges fit—or fail to fit—within existing practices.
- ***Consensus-building function*:** Rather than acting as top-down arbiters, traditional leaders guide constructive dialogue to ensure that outcomes reflect the collective sense of justice. This inclusive approach fortifies legitimacy and reinforces unity.
- ***Alignment with Constitutional principles*:** Although customary law must comply with the Constitution, leaders who genuinely embody Indigenous values can adapt evolving norms to constitutional requirements, preserving cultural identity while upholding rights guaranteed by the Bill of Rights.

4.2.4 *Continual refinement through collective participation*
Customary law thrives when each generation engages in shaping its rules. This is one of the reasons why genealogy and heritage are important. By participating in community meetings and ceremonial events, young and old alike absorb the values underpinning law-making. Over time, they add new perspectives, refining the law as a living entity rather than a static set of edicts. This dynamic allows customary structures to address contemporary issues—such as land rights, environmental pressures, public health, or even data protection—within a framework of shared ethics and ancestral wisdom.

4.3 **Diversity among Indigenous communities**
Not all Indigenous communities follow a uniform template for social organisation or cultural norms. The Bafokeng, for instance, have developed governance structures and economic ventures tied closely to their mineral-rich land, resulting in specific customs around property rights, local economic activities, and succession. By contrast, the abaThembu of the Eastern Cape maintain different forms of royal genealogies, place a premium on certain initiation practices, and integrate their spiritual beliefs into decision-making processes in ways that reflect long-established wisdom and customs. Khoi-San communities, too, often derive communal identity through distinct rituals and genealogical narratives that differ markedly from the lineage-based leadership systems of BaNtu-speaking groups.

These differences extend not only to ceremonies such as initiation or land allocation but also to the legal standing of decision-making forums and dispute-resolution practices. In some communities, councils or assemblies rely more heavily on consensus. In others, the monarchic lineage plays an outsized role in legitimating the outcomes of communal gatherings. Consequently, any legal instrument that purports to regulate or recognise traditional authority must avoid a one-size-fits-all approach.

At the same time, we recognise that flexibility must coexist with Constitutional imperatives, such as equality, human dignity, and the right to freedom of association. The Constitutional Court has held in cases like *Shilubana and Others v Nwamitwa* that evolving cultural practices must remain consistent with the Bill of Rights. If a practice discriminates or otherwise breaches Constitutional rights, it must be adapted or discarded. In this way, Constitutional oversight does not extinguish cultural differences but shapes them to align with fundamental rights, thereby contributing to a "living" customary law system.

From a public policy standpoint, lawmakers must balance the need for uniform legal standards with the reality of diverse Indigenous identities. Section 211(2) of the Constitution authorises the continued existence of traditional leadership according to customary law. However, in applying such provisions, legislation should recognise that "customary law" is not a monolith. Allowing our communities to retain the power to shape and revise our norms—subject to fundamental constitutional guarantees—creates the best possible environment for meaningful, context-specific governance.

Ultimately, acknowledging these community-specific differences does not fragment the country's governance framework but enriches it. Pluralism—wherein Bafokeng, abaThembu, Khoi-San,

and others each maintain self-defined leadership models—supports healthy Indigenous identity, fosters accountability within local communities, and deepens democratic participation. That pluralism remains anchored by Constitutional principles ensures that the overarching rule of law stands firm, even as leadership structures differ from region to region.

The diversity of Indigenous communities in South Africa is an asset, reflecting a tapestry of genealogical traditions, spiritual obligations, and communal customs. A law that proposes to recognise traditional authority and leadership must accommodate these differences while adhering to Constitutional standards of fairness, equality, and dignity. Such an approach not only sustains cultural vibrancy but also strengthens local governance and fosters deeper social cohesion across the nation.

4.4 **Rightful participation and representation**

Section 235 formally recognises the right of communities to self-determination within the broader sovereign framework of South Africa. By recognising collective rights that flow from shared culture and custom, it reflects the Constitutional emphasis on both diversity and local autonomy. This principle would be hollow if such communities—particularly those governed by or adhering to customary law—were sidelined in discussions concerning legislation that directly impacts their identity, authority, or social fabric.

In *Doctors for Life*, the Court closely examined sections 59, 72, and 118 of the Constitution, which oblige the National Assembly, the National Council of Provinces, and provincial legislatures, respectively, to "facilitate public involvement" in their legislative processes. The Court concluded that "public involvement" must be meaningful, implying robust opportunities for all affected or interested parties to voice concerns, influence outcomes, and see their input seriously considered (paras 129–131).

Alongside these Constitutional imperatives, the Promotion of Administrative Justice Act, 3 of 2000 (PAJA), enshrines fair and reasonable administrative decision-making, including the right to be heard and to make representations. Where legislative or executive measures, such as new regulations under the TKLA, are administratively implemented, PAJA's requirements for procedural fairness further reinforce the need to engage affected communities constructively.

For many Indigenous communities, especially those practising AIKS, the fundamental act of having a say in crafting or revising legislation is central to self-determination. Excluding them would amount to imposing external frameworks that may disregard local genealogies, rites, or leadership configurations. By contrast, legitimate law-making fosters trust and respect, empowering communities to adapt their customs in a manner consistent with constitutional principles of dignity and equality (*Shilubana and Others*, paras 55–59).

Moreover, robust participation does not imply obligatory consent—as reaffirmed in *Baleni and Others v Minister of Mineral Resources and Others (73768/2016) [2018]*. In that matter, the Court emphasised a community's "right to say no" when proposed measures threaten or undermine their customary rights and livelihood. Thus, where individuals and communities are consulted, they remain free to withhold agreement if the proposal clashes with their collective

interests or cultural imperatives. Consultation is essential, but participation does not automatically translate into acceptance.

The Court, in *Doctors for Life*, admonished any process that reduces consultation to mere formalities. Legislation impacting traditional authority or self-governance must be shaped not by superficial "public hearings" but by in-depth engagement sensitive to language, logistical barriers, and historical marginalisation. This approach resonates equally in rural contexts, where communities might lack the resources or infrastructure to participate unless the process is specifically tailored to reach them (*Doctors for Life*, para 132). Where communal voices are genuinely solicited and integrated, the resultant framework is more likely to carry social legitimacy. Leaders and members of Indigenous communities can then confidently apply and enforce the law, knowing it reflects their identity. Conversely, legislation that emerges from a flawed or narrow consultation process often invites suspicion or non-compliance.

At the intersection of local governance and traditional authority, legislation such as the Intergovernmental Relations Framework Act, 13 of 2005, and provisions in the Local Government: Municipal Systems Act, 32 of 2000, also demand public participation. Where the boundaries of municipal service delivery and indigenous leadership overlap, inclusive processes that incorporate local knowledge can avert conflict and reinforce cooperative governance.

Representation should not be confined to recognised chiefs or councils alone. In *Merafong Demarcation Forum v President of the Republic of South Africa [2008] ZACC 10* (paras 36–37), the Court discussed how even wide-ranging consultation can fail if it excludes certain groupings who bear the brunt of legislative outcomes. Women, youth, and sub-groups, especially in rural areas, may all hold distinct perspectives on how best to regulate or preserve their customary practices.

Ensuring that Indigenous communities themselves, rather than external technocrats, shape the very laws governing us is both a constitutional and a moral imperative. Sections 59, 72, and 118, together with PAJA, require government bodies at all levels to enable genuine, accessible participation. This alignment with Doctors for Life not only honours the constitutional value of self-determination—enshrined in section 235—but also ensures that legislation will resonate with the lived realities of the communities in question. A robust commitment to meaningful consultation enhances legitimacy, fosters trust, and situates Indigenous communities as active agents in determining their future. In that sense, it is not merely about compliance but about elevating the voices of those whose identities, cultures, and ways of life are so deeply entwined with the customary law and AIKS that shape their daily existence.

5. Challenges with the TKLA

5.1 **Drafting and exclusion of core Indigenous perspectives**

One of the primary criticisms of the TKLA has been that it was largely drafted without sufficient community public participation, especially among rural dwellers who rely heavily on customary

rules and traditional authority. Reports show that many of those significantly affected—traditional leaders, women's groups, rural youth, and various traditional health practitioners—did not have an equal voice. Such a top-down approach fosters distrust and leaves the law unresponsive to lived realities.

5.2 **Comparisons with the 2003 Governance Framework**

The Traditional Leadership and Governance Framework Act of 2003 had provisions recognising the imperative to address historical injustice. Regrettably, the TKLA appears to have excised or diminished explicit references to "addressing the injustices of the past," thereby omitting a vital principle needed for transformation. This omission undermines the potential for the TKLA to stand as a powerful corrective instrument.

5.3 **Impact of Constitutional challenge**

In *Mogale and Others v Speaker of the National Assembly* [2023] ZACC 14, the Constitutional Court declared the TKLA invalid for insufficient public participation. The Court emphasised that Parliament must meet the constitutional obligation in sections 59, 72, and 118 of the Constitution to facilitate meaningful public involvement. Although the Act's invalidity was suspended, it remains crucial that, when re-enacted, it addresses not just procedural issues but also the deeper content-based deficiencies that fail to remedy historical inequities or to reflect living customary law and AIKS.

Given its stated purpose of regulating and recognising leadership structures within Indigenous communities, the TKLA squarely implies self-determination. Any amendments or processes to correct Constitutional deficiencies must be driven by inclusive consultation, consistent with sections 59, 72, and 118 of the Constitution. Traditional leaders, community members, and civil society must be offered robust fora and adequate time to articulate their concerns, as well as propose solutions and recommendations.

5.4 **Fiscal dependence and "weaponisation" of resources**

As traditional authorities, we usually lack direct budgetary allocations from the fiscus and find ourselves perpetually reliant on municipal or provincial grants for operational expenses. Because disbursements can be delayed, conditional, or insufficient, our ability to direct local development, facilitate public participation, or respond to crises according to cultural imperatives is severely hampered. This dependence forms a power dynamic where the formal government may, albeit unintentionally, leverage fiscal control to influence or dictate outcomes.

Where a customary council or traditional leader must "plead" for finances to maintain offices, convene gatherings, or implement local socio-economic initiatives, traditional authority risks marginalisation and erosion. In *Khosa v Minister of Social Development* [2004] ZACC 11, the Constitutional Court recognised that the State's refusal (or inability) to provide essential socio-economic support to vulnerable groups could infringe constitutional rights such as dignity and equality (paras 74–76). Although that case focused on social grants for permanent residents, the principle applies by analogy: withholding or restricting funding from an entity or group central to social and cultural life implicates the realisation of basic rights. This is also at the heart of why months after the judgement in *Mogale and others,* as traditional leaders we

have not been able to self-organise and make traction on providing further input to whatever plans the legislature is driving in attempting to comply with the Court order.

Section 9 of the Constitution enumerates prohibited grounds of discrimination, including "culture" and "social origin." By perpetuating a system in which some communities—particularly those living under traditional authority—remain systematically underfunded or financially subordinated, the State risks discriminatory effects. The *City Council of Pretoria v Walker* [1998] ZACC 1 case showed that seemingly neutral policies can amount to indirect discrimination if they disproportionately impact a vulnerable group (paras 31–32). In a similar vein, structural underfunding of traditional governance fosters an environment of indirect discrimination based on cultural belonging and historical social origin.

Indigenous practitioners are facing a similar issue with the *Traditional Health Practitioners Regulations, 2024*. The Department of Health and its Interim Council of Traditional Health Practitioners of South Africa have gone on record to say that they facilitated participation based on where they could reach and resources allowed. The disturbing thing is that this reach did not or seldomly extended to rural or township areas where the greatest effect of the regulations would be felt. The result was indirect discrimination, where resource allocation was at the centre. If traditional leaders had been an integral part of the participation planning, this picture would have been starkly different. This is especially concerning because traditional health practitioners are located within the framework of traditional authority based on the relevant AIKS (We stand by the submission we sent to sent to the Department of Health in September 2024 on the challenges of the *Traditional Health Practitioners Regulations, 2024*).

Dignity in an Indigenous community is intimately linked to communal self-determination, as well as the pride in traditional governance structures that have existed for generations. When traditional leadership cannot finance basic administrative activities—be it dispute resolution gatherings, public participation forums, or community development projects—the community's sense of identity and collective dignity is compromised. This is emphasised in *MEC for Education: KwaZulu-Natal v Pillay* [2007] ZACC 21 (paras 65–70). The Court in *Pillay* tied cultural practices directly to individual and group dignity, suggesting that the State should avoid policies or resource allocations that stifle cultural flourishing.

Depriving or restricting budgets to Indigenous authorities also impinges on the equality principle by cutting them off from genuine participation in local or regional governance processes. *Doctors for Life* established that meaningful involvement is a constitutional prerequisite in law-making and policy design. However, if the entity representing local communities—often traditional leadership—lacks resources, the channels for that participation become illusory or tokenistic. Without resources to travel, convene, and develop policy proposals, the community is effectively silenced.

Sections 214 and 215 of the Constitution govern the division of revenue between different spheres of government, seeking an equitable allocation that promotes "development in all areas". Although these provisions mostly address municipalities and provinces, a reformed approach could stipulate ring-fenced or direct allocations to traditional authority. The

Intergovernmental Relations Framework Act, 13 of 2005, also contemplates cooperative mechanisms—yet rarely do these mechanisms ensure that Indigenous institutions—amaKomkhulu—access stable funding to execute their core mandates.

Robust oversight by Parliament or provincial legislatures can ensure that resources allocated to or for the benefit of traditional leadership are not subject to undue bureaucratic hurdles. "Weaponising" resources—for instance, distributing funds selectively or making them contingent on certain policy positions—contravenes the principle of cooperative governance (Constitution, s 41). It also undercuts the autonomy that underpins communities' cultural rights in sections 30 and 31 of the Constitution, as well as the right to self-determination in section 235.

Reconciling the demands of modern statehood with living customary law requires that traditional authorities become robust partners in governance, not subordinate claimants. The Constitutional Court in *Premier, Limpopo Province v Speaker of the Limpopo Provincial Legislature* [2011] ZACC 25 (para 51) stressed the importance of multi-layered governance that fosters synergy instead of conflict. For synergy to materialise, the budgetary relationship cannot remain one-sided or used as a lever to direct conduct in Indigenous communities. Where communities are left impoverished, with leadership unable to preserve or promote cultural events, languages, and AIKS, the constitutional protection against unfair discrimination on the grounds of language and social origin (s 9(3), read with s 30 and s 31) becomes nominal. True cultural vitality demands not only an abstract recognition of these rights but also tangible empowerment—manifested in adequate funding, infrastructural support, and the freedom to set local development priorities.

6. Structure of Traditional Authority

6.1 **Original structures vs. Imposed Councils**

Historically, traditional authority in many Indigenous communities was layered in a coherent hierarchy—inkosi (chief) and inkosi enkulu (king)—rooted in genealogical ties, collective assent, and centuries-old spiritual mandates (Mvenene 2023, 2–3). In such a system, leadership legitimacy followed carefully delineated lines of succession, ensuring that the broader community's interests were served by those with deep cultural and ancestral grounding.

Colonial and later apartheid governments, however, introduced superimposed titles and statutory councils—often referred to as Tribal Authorities under the *Bantu Authorities Act (No. 68 of 1951)*—which frequently ignored or undermined authentic lineages (Mvenene 2023, 4–6). Instead of respecting existing genealogies and the dynamic interplay of communal consent, state officials appointed or promoted "headmen" loyal to the government. In many instances, as attested by the creation of "collaborative" chiefs, one's representation in these newly fashioned councils became the de facto criterion of "royalty," even if that status contradicted the community's traditional processes.

This imposed model not only fostered confusion but also severely fractured communal trust. Many rightful heirs or established leaders were sidelined if they refused to cooperate with government mandates, resulting in substituted governance that was at odds with the community's normative structures. As a result, a practice of artificially designating "puppet chiefs" took hold, diminishing the moral credibility of traditional authority (Mvenene 2023, 5–7).

6.2 **Current realities**

Today, indigenous communities grapple with multiple layers of leadership—including historically recognised kings or chiefs, government-appointed headmen, and statutory structures created under apartheid-era legislation. These often carry overlapping or outright contradictory claims of legitimacy, with some leaders deriving authority from genealogical tradition, while others owe their positions to political appointment.

Such confusion is compounded by insufficient clarity in legislation over how to reconcile these contending claims. Communities seeking vital services or attempting to engage in development planning must navigate a tangle of overlapping offices. Many rely on local municipalities or provincial departments that themselves are uncertain which "leadership structure" to consult. As a result, crucial local initiatives—such as land allocation, health outreach, and agricultural projects—become mired in administrative standoffs or forced compliance with "official" structures that lack grassroots support.

Further, economic power remains concentrated in formal government channels, perpetuating the legacy of "weaponised" resource allocation (see also Mvenene 2023, 6–8). Where resource flows continue to bypass genealogically legitimate councils—or are channelled through historically imposed authorities—communities have little choice but to accept top-down directives, eroding any meaningful autonomy.

6.3 **Need for authentic recognition mechanisms**

A revised legislative and policy framework must be flexible enough to:

6.3.1 Reflect actual genealogies and custom

As emphasised throughout Mvenene's study (2023), the fundamental test of legitimacy in pre-colonial times was ancestral descent and communal consensus. Any law purporting to "recognise" a traditional leader, headman, or community should **verify** genealogical claims via local elders, spiritual practitioners, and documented lineage. Imposing a uniform, top-down recognition process—without input from those who actively keep the history and identity of the clan—simply resurrects colonial mistakes of ignoring authentic lines of authority.

6.3.2 Root out imposed or parallel structures

Where a structure has purely colonial or apartheid origins—i.e., no basis in community tradition—the law must provide pathways either to **reintegration** (if it has since garnered legitimate communal support) or to **dissolution**. Echoing the judgments in *Shilubana and Others v Nwamitwa* and *Bhe v Magistrate, Khayelitsha*, living customary law evolves when guided by those who practice it, not by outside forces that historically manipulated or compromised it.

6.3.3 Avoid one-size-fits-all models

Not all Indigenous communities function identically; the social contract for the Bafokeng, for instance, may differ fundamentally from that of the amaThembu or the Khoi-San. Accordingly, regulation must respect **local uniqueness**—whether that pertains to ritual significance, genealogical lines, or the interplay of spiritual and communal norms. Failure to accommodate these distinctions leads to precisely the sort of "invented" or "imposed" leadership structures colonial regimes used to control Indigenous peoples (Mvenene 2023, 3–5).

6.3.4 *Facilitate meaningful participation*

Finally, the law should empower communities themselves to define, debate, and if needed, adapt their own leadership. Section 235 of the Constitution, together with *Doctors for Life International v Speaker of the National Assembly*, underscores that self-determination and meaningful consultation are prerequisites. Ensuring that genealogical heirs and communal representatives can engage in these processes, free from state coercion, will restore the legitimacy of an institution historically diminished by external interference.

To reform the "structure of traditional authority" demands authentic recognition of community-endorsed genealogies and respectful alignment with local custom. By removing remnants of colonial-era councils and bridging the divide between historically valid leaders and modern governmental structures, South Africa can achieve a framework that honours the living nature of customary law, fosters local development, and realises the constitutional promise of human dignity and self-determination.

7. Powers of Traditional Authority

Traditional authorities, drawing on centuries of lived custom, remain central to law-making and dispute resolution, guide local economic planning and land use, and play an indispensable role in public health efforts. The synergy between these functions and the modern state, however, depends on reforming how legislation structures their powers. By ensuring that councils reflect authentic genealogical legitimacy, guaranteeing resource access and meaningful representation in integrated development planning, and forging dynamic partnerships—especially in healthcare—South Africa can honour the Constitution's commitment to equality, dignity, and self-determination.

Only through such cooperative governance—rooted in shared values and robust consultation—can the potential of traditional authorities be fully realised, unburdened by the colonial and apartheid legacies that once reduced them to nominal or co-opted instruments of the state.

7.1 **Law-making and dispute resolution**

Traditional courts and tribunals, historically guided by restorative justice principles, have been pivotal in maintaining social cohesion in Indigenous communities (see Mvenene 2023). In the pre-colonial era, leaders settled conflicts through inclusive gatherings (e.g., ibhunga, imbizo or lekgotla), ensuring broad participation by elders, counsellors, and community members. Even

under colonial disruption, these customary forums remained essential for addressing local disputes—especially where state judicial mechanisms were distant or unresponsive.

Despite this long standing role, the Traditional Courts Bill and other subsequent legislative frameworks have faced sustained criticism for insufficiently involving local voices, particularly from communities directly governed by customary law. As emphasised in *Doctors for Life*, meaningful consultation is constitutionally imperative, and it is all the more crucial when legislating on dispute-resolution methods that have deep cultural resonance.

Courts applying customary law must uphold equality, dignity, and non-discrimination (see *Bhe v Magistrate, Khayelitsha [2004] ZACC 17*)—yet they must do so without negating the unique spiritual and genealogical underpinnings of traditional authority. This balancing act demands legislative space for ongoing evolution: if local norms are living and adaptive (as the Constitutional Court affirmed in *Shilubana and Others v Nwamitwa [2008] ZACC 9*), then the law must accommodate the capacity of communities and traditional leaders to refine their dispute-resolution processes in alignment with constitutional safeguards.

Granting traditional authorities scope to innovate is central to bridging modern constitutional principles with local ways of resolving conflicts. For instance, where women's rights or youth voices might have not been clear historically, the Bill or any future legislation should clarify how to integrate those concerns without hollowing out authentic cultural practice. In line with the principle of self-determination (Constitution, s 235), customary law reform must be directed from within—empowering local genealogical and spiritual experts, rather than imposing top-down dictates.

7.2 **Local economic planning, land and infrastructure**

Economically, rural communities often rely on traditional leaders to allocate land or manage development priorities. Historically, these leaders acted as stewards of communal land—regulating grazing, agricultural sites, and housing allocations. *Shilubana* also illustrates that living customary law can incorporate new challenges such as environmental degradation or shifting economic imperatives, provided communities lead the adaptation.

Under the Constitution's vision of cooperative governance (s 40–41), municipalities and traditional authorities share responsibility for integrated development planning. Yet, some statutory councils created during colonial and apartheid regimes are still used as intermediaries—often ignoring genealogical leadership and stifling genuine community engagement. Where local economic planning or service delivery is concerned, relevant legislation (e.g., the Municipal Systems Act 32 of 2000) must clarify that indigenous councils—especially authentic inkosi or inkosi enkulu structures—participate on equal footing in setting local priorities, budgets, and timelines.

Our earlier discussions on the "weaponisation" of resources highlight how inadequate or selective fiscal flows hamper local development. If communities are forced to approach outside agencies or parallel "traditional councils" for every infrastructural or land-use decision, real autonomy is eroded. Accordingly, the next iteration of the TKLA or any complementary legislation should explicitly empower genealogically legitimate leaders to initiate or jointly

manage land-use frameworks, ensuring that historically marginalised groups do not remain at the periphery of local development. If not the TKLA, then this ought to be proposed as an amendment to either existing legislations like the *Spatial Planning and Land Use Management Act 16 of 2013* or new legislation that complements the TKLA should be tabled.

7.3 **Public health and traditional health practitioners**

In numerous rural areas, traditional health practitioners—amaXhwele, amaGqirha, or iiGcibi—constitute the front line of healthcare, particularly where state clinics are distant or under-resourced. During public health crises—like pandemics or outbreaks of diseases—traditional authorities often coordinate local responses, mobilising households, enforcing quarantine measures, or organising communal cleansing rituals. These activities underscore the synergy between communal well-being and spiritual beliefs, historically central to African societies.

If harnessed effectively, the link between a principal traditional council (e.g., a king's or queen's council) and local health authorities could be transformative. Traditional leaders can identify legitimate traditional health practitioners, promote safe practices, and facilitate broad community buy-in for health interventions. The Constitutional Court's approach to customary law in *Pillay* (on religious and cultural expressions in schools) likewise affirms that the state should accommodate cultural practices unless they unreasonably infringe on protected rights. By extension, a well-designed legal framework could enable close cooperation between health departments and Indigenous practitioners for the distribution of vaccines, maternal care, or mental health support.

To date, legislation has rarely addressed how a king, queen, or principal traditional council might partner with provincial health departments or with national structures like the Department of Health. Clarifying these partnerships is urgent: as it stands, the law's silence leaves rural healthcare disjointed. A revised TKLA or related legislation or regulation (like the Traditional Health Practitioners Act and Regulations) should specify how recognised councils—once genealogically validated—can systematically liaise with government health agencies. This not only respects local autonomy but can also enhance service coverage, reduce stigma surrounding certain health conditions, and ensure culturally congruent care.

8. Proposed relationship between Traditional Authority, Local, Provincial, and National Government

8.1 **Cooperative governance in practice**

Chapter 3 of the Constitution mandates cooperative governance grounded in mutual trust and good faith across national, provincial, and local spheres. In principle, the Intergovernmental Relations Framework Act seeks to align policies and responsibilities among these spheres. Yet, as both experience and scholarship illustrate (Mvenene 2023, 4–6), the precise role of a king, queen, or traditional leader remains opaque and sometimes contested. Traditional authorities

frequently report tensions with municipalities over land use, development planning, and local service delivery—leading to duplication of efforts or prolonged jurisdictional disputes.

Revisions to the TKLA must clarify how recognised leaders interact with municipal councils, provincial executives, and national departments. Rather than leaving such engagement to *ad hoc* negotiation, the Act should establish:

- **Joint planning mechanisms**: Regular forums ensuring traditional authorities participate in drafting integrated development plans (IDPs).
- **Shared budgeting procedures**: Coordinated funding allocations where local priorities are recognised alongside municipal or provincial mandates.
- **Conflict resolution pathways**: Whenever disputes arise regarding land distribution, project roll-outs, or customary practices, the law must specify how or where these are escalated, preventing unilateral actions by any single sphere of government.

Historically, the marginalisation of genealogically legitimate leaders often sprang from top-down processes that bypassed local norms. Consequently, the formal government must re-build synergy with Indigenous authorities in a manner that draws on shared moral legitimacy, ensuring that the "living law" approach recognised by the Constitutional Court (*Shilubana and Others v Nwamitwa [2008] ZACC 9*) guides sustainable partnerships.

8.2 **Fiscal support and autonomy**

One of the enduring issues identified across colonial, apartheid, and even post-apartheid administrations is the budgetary dependence of traditional authorities. In many communities, leaders cannot champion urgent local needs—be it for infrastructure repair, environmental stewardship, or youth empowerment—because they lack direct fiscal powers. Instead, funds flow almost exclusively through municipal or provincial channels, potentially stifling local development initiatives that reflect grassroots priorities.

Revising the TKLA should therefore address how traditional councils might receive dedicated, ring-fenced allocations to support their core mandates. This could include:

- **Capacity-building grants**: Sums earmarked for training staff, improving governance systems, and modernising customary administration in line with constitutional values.
- **Regular disbursement protocols**: Arrangements to prevent "weaponisation" of resources, ensuring that local development does not hinge upon shifting political alliances.
- **Structured oversight**: Transparent reporting requirements that balance autonomy with accountability. The intention is not to replicate the colonial pattern of undermining traditional authority, but to ensure public funds are managed ethically and effectively (*Municipal Finance Management Act 56 of 2003*).

Only by granting genealogically legitimate authorities a measure of financial freedom and capacity can the state rectify the structural imbalances that have historically subordinated indigenous communities' well-being to external political agendas.

8.3 **Preventing further marginalisation**
Without clear frameworks for consultation, budgeting, and collaborative planning, longstanding inequities risk perpetuation. The history of forced councils and nominal "chiefs" to further colonial or apartheid interests shows how easily governance structures can degrade into tools of control (Mvenene 2023, 6–8). Where genuine leaders are left with no resources or official standing, the principle of self-determination (s 235 of the Constitution) is compromised yet again.

Section 195 of the Constitution calls for a government that is development-oriented, participatory, and accountable. Realising that vision, especially in historically disadvantaged rural areas, depends on bridging local priorities with formal state action. By refining the TKLA to embed the authentic genealogical leadership in cooperative governance structures—and ensuring stable resource streams—South Africa can create a partnership model that uplifts communities rather than consigning them to continued marginalisation.

In essence, synergy among all government spheres and truly representative traditional authority is indispensable. It is how the Constitution's commitment to dignity, equality, and cultural freedom finds real expression, honouring the living identity of indigenous communities rather than relegating them to a subordinate tier of governance.

9. Recommendations and next steps

We recommend the following:

9.1 Revise and expand public participation

9.1.1 Redo public hearings

In line with the Constitutional Court's guidance in *Doctors for Life*, new and comprehensive public hearings must be organised—especially in rural districts and historically marginalised regions. These consultations should:

- **Reach remote areas:** Hearings must be conducted in or near the villages, making it feasible for elders, youth, and genealogical experts to attend.
- **Use Indigenous languages:** Where the majority of the community speaks isiXhosa, isiZulu, or other local tongues, the process should include interpretation and translation, ensuring truly inclusive dialogue.
- **Engage local leadership:** Traditional authorities—iiKumkani, iiNkosi, iiNkosikazi, etc.—should be central to the planning and facilitation, building trust and communal ownership.

9.1.2 Parliamentary task team

Parliament should establish a specialised task team comprising parliamentarians, legislative

drafters, constitutional law experts, and a broad cross-section of genealogically legitimate traditional leaders. This multi-disciplinary body would:

- **Draft amendments collaboratively:** Using direct input from local Indigenous communities and genealogical authorities, the task team can rectify existing omissions or ambiguities in the TKLA.
- **Review colonial and apartheid distortions:** Part of the team's mandate should include reviewing historical records to identify areas where colonial or apartheid policies misrepresented or invalidated indigenous governance structures.

9.2 Reinstate "Addressing Injustices of the Past"

The revised TKLA's objectives must unambiguously state a commitment to redressing colonial and apartheid-era interventions that weakened or co-opted traditional leadership. Such language is vital, for the Act to:

- **Acknowledge historic wrongs:** The preamble should detail how successive regimes sidelined genealogically rightful leaders and rearranged lines of authority ensures that legislative reforms do not perpetuate these distortions.
- **Embody transformative mandate:** By making restitution of historical injustices a legislative purpose, Parliament underscores its commitment to realigning current governance models with authentic local customs and genealogies.

9.3 Clarify structural hierarchies and Council composition

9.3.1 Authentic recognition mechanisms

Criteria for recognition—whether for a headman/headwoman, senior traditional leader, or a king/queen—must be developed in partnership with customary law experts from each specific region (see *Shilubana and Others v Nwamitwa [2008] ZACC 9*). Rather than universal "one-size-fits-all" requirements, the revised Act should accommodate local genealogical and ritual nuances, aligning with the Constitution's respect for cultural diversity. This may also look like certain aspects being legislated provincially, instead of nationally.

9.3.2 Restore genuine seniority

Where colonial or apartheid-era frameworks replaced or downgraded legitimate leaders, remedial processes should allow communities to reconfirm genealogical heirs or reconstitute councils. This involves:

- **Verifying lineage and royal family consent:** Elders and royal family-based genealogical records can attest to rightful succession lines.
- **Legalising corrected hierarchies:** Any reordering of leadership must be formally recognised to prevent parallel or competing claims and to unify communal trust.

9.4 Define and enforce functional powers

9.4.1 Dispute resolution

Legislation should provide clear legislative space for customary courts to apply restorative dispute-resolution methods. These methods, historically anchored in inclusive dialogue (ibhunga, imbizo, lekgotla), should be upheld as long as they remain consonant with constitutional values (*Bhe v Magistrate, Khayelitsha [2004] ZACC 17*).

9.4.2 Land and development

Where municipalities draft Integrated Development Plans (IDPs), recognised and legitimate traditional authorities must be more than "consulted"; they should co-create and co-supervise the local development agenda. Statutory language should clarify that local governments must obtain meaningful consent or input from genealogically legitimate leaders for land use or resource allocation in indigenously governed areas.

9.4.3 Public health collaboration

The revised law should formalise pathways for cooperative health initiatives. Local or provincial health departments, in partnership with recognised councils, might coordinate maternal care, immunisation drives, or mental health support—harnessing Indigenous healing knowledge, provided that it respects constitutional safeguards (see *Pillay* on cultural expressions).

9.5 Guarantee financial resources and accountability

9.5.1 Dedicated budget lines

Continuing the practice of "weaponising" resources will undermine any legislative reforms. Accordingly, the Act should establish ring-fenced allocations—or a stable formula—for supporting the operations of recognised traditional councils. Oversight requirements, aligned with the *Public Finance Management Act 1 of 1999*, should ensure transparency without imposing top-down micromanagement.

9.5.2 Capacity-building

Investing in training for traditional authorities ensures that we can administer finances responsibly, uphold constitutional norms, and effectively engage in government-led processes. Such capacity-building is vital if genealogically legitimate councils are to function as equal partners rather than subordinate claimants.

9.6 Renewed focus on self-determination

Section 235 of the Constitution upholds the right to self-determination, stressing that Indigenous communities have the prerogative to shape governance structures consistent with their cultural foundations—and in balance with constitutional rights. The revised TKLA must:

- **Affirm Indigenous autonomy:** Where genealogical processes confirm a particular leader or leadership council, that leadership should be presumed valid in local governance.
- **Respect the Bill of Rights:** Even as communities self-organise, practices must align with the equality, freedom, and non-discrimination clauses in the Constitution.

- **Enable dynamic custom:** In line with *Shilubana*, customary law evolves when community members themselves refine their norms. Legislation must refrain from imposing static templates, permitting each region to adapt in ways that reflect lived tradition.

By consolidating these recommendations—from overhauling public hearings and addressing historical injustices to clarifying functional powers and enabling robust funding—the revised TKLA can achieve a meaningful transformation. Taken together, these steps ensure that Indigenous communities realise the right to self-determination, bridging the divide between modern constitutional imperatives and centuries of cultural inheritance through AIKS.

10. Conclusion

Our Constitution envisions a South Africa in which cultural, religious, and linguistic communities flourish, freed from the legacies of colonialism and apartheid (Mvenene 2023, 2–4). Realising this vision in the sphere of Indigenous governance requires that the TKLA **directly confront historic distortions** still undermining authentic customary authority. Through **meaningful consultation**, cooperative planning among all spheres of government, and a renewed emphasis on AIKS, we can **dismantle** the colonial frameworks that long held communities hostage.

We have repeatedly highlighted how **genealogical legitimacy** and communal consensus—integral to pre-colonial leadership—were eroded by imposed councils and legislative manipulations (Mvenene 2023, 4–6). Restoring these original structures will require **robust public participation**, ring-fenced fiscal support for recognised leaders, and a formal legislative commitment to **addressing injustices of the past**. Such measures must also respect the inherent "right to say no" (*Baleni and Others v Minister of Mineral Resources and Others*) that communities hold, ensuring that consultation never becomes merely a "tick-box exercise." Only by these means can local governance reflect the Constitution's commitments to **dignity, equality, and freedom**.

We remain committed to **constructive dialogue** with the Department, Parliament, and all relevant stakeholders to reshape the TKLA, ensuring that Indigenous authorities are treated not as relics of history but as **dynamic sources** of cultural identity, communal development, and dispute resolution. This approach upholds the constitutional principle of **self-determination** (s 235) while aligning with the Bill of Rights' foundational protections. It also respects the **unique prerogatives** of the royal family in preserving genealogical lines, alongside the broader community's right to participate—or withhold consent.

If South Africa aspires to be a cohesive, thriving society, we cannot **sideline** those who live under AIKS. A re-envisioned TKLA—guided by the spirit of redress, meaningful consultation, genealogical authenticity, and the "right to say no"—honours our constitutional imperative to **overcome the injustices** of colonialism and apartheid. Only then do we see all the colours of

our "rainbow" radiating clearly, reflecting a future in which **every community** stands in dignity and freedom.

We trust these proposals will assist in shaping revised legislation that is fully consistent with **constitutional values**, responds to the deep historical injustices outlined by our communities, and **solidifies traditional authority** as an essential part of a truly inclusive, post-apartheid South Africa.

Thank you.

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