

KWAZULU AMAKHOSI AND IZIPHAKANYISWA ACT

NO. 9 OF 1990

[ASSENTED TO BY THE STATE PRESIDENT ON THE 8 JULY, 1991 – ENGLISH TEXT SIGNED.]

[DATE OF COMMENCEMENT: 1 OCTOBER, 1991]

as amended by

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 9 of 1991

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 3 of 1992

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 7 of 1993

KwaZulu Amakhosi and Iziphakanyiswa Amendment Act, No. 19 of 1993

GENERAL NOTE

In terms of Proclamation No. 107 of 17 June, 1994, the administration of Act No. 9 of 1990 has been assigned to KwaZulu-Natal.

ACT

To consolidate and amend the laws relating to amakhosi and iziphakanyiswa; to provide for the recognition, appointment and conditions of service, discipline, retirement, dismissal and deposition of amakhosi and iziphakanyiswa; to empower the Cabinet to summon an inkosi or isiphakanyiswa; to provide for the conferment of civil and criminal jurisdiction on amakhosi and iziphakanyiswa; to provide for the establishment of tribal and regional authorities; and to provide for matters incidental thereto.

1. Definitions

In this Act, unless the context otherwise indicates—

“allocated officer” means an officer referred to in section 1 of the KwaZulu Public Service Act, 1985 (Act No 18 of 1985);

“Cabinet” means the Cabinet of the KwaZulu Government;

“citizen” means any person who is a citizen of KwaZulu in terms of the National States Citizenship Act, 1970 (Act No 26 of 1970);

“community authority” means a community authority established in terms of section 5 (1);

"competent official" means a magistrate of a district or an officer of the Department of the Chief Minister;

"councillor" unless otherwise indicated, means any person who is a member of a tribal or community or regional authority;

"custom" unless otherwise indicated means a recognised Zulu custom;

"Government" means the Government of KwaZulu;

"hereditary Inkosi" means a hereditary Inkosi according to Zulu law;

"imbizo" means an imbizo in accordance with custom;

"isekela lenkosi" means any person who has been appointed by inkosi or an isiphakanyiswa to deputize for him in accordance with custom;

"inkosi" means any person appointed in terms of section 12, and the word ibambabukhosi or isekela lenkosi has a corresponding meaning;

"iziphakanyiswa" means any person appointed in terms of section 12;

"khonza fee" means a fee payable by a person to an inkosi to whom he wishes to owe allegiance;

"KwaZulu" means the area for which the KwaZulu Legislative Assembly has been established;

"Minister" means the Chief Minister and shall include any Minister authorised thereto by him; [Definition of "Minister" amended by Act 19 of 1993.]

"Official Gazette" means the Official Gazette of KwaZulu;

"prescribed" means prescribed by regulation;

"regional authority" means a regional authority established in terms of section 5 (1);

"Secretary" means the Secretary-General for the Department of the Chief Minister;
[Definition of "Secretary" substituted by Act 19 of 1993.]

"This Act" also the regulations;

"Treasury" means the treasury of the KwaZulu Government;

"tribal authority" means a tribal authority established in terms of section 5 (1);

"Tribal constable" means any person appointed in terms of section 7 (4);

"valelisa fees" means a fee payable by a person to an inkosi of a tribe in accordance with custom by a person who wishes to leave such tribe or community; [Definition of "valelisa fees" amended by Act 19 of 1993.]

"Zulu law" means Zulu customary law.

CHAPTER 1

TRIBAL AND COMMUNITY ORGANISATION

2. Definitions of areas and constitution, division, amalgamation and recognition of tribes or communities

(1) The minister may, after consultation with the Cabinet, by notice in the Official Gazette—

- (a) define or redefine the boundaries of the area of any tribe or community;
- (b) constitute a new tribe or community;
- (c) divide any existing tribe or community into two or more tribes or communities or amalgamate tribes or communities or parts of tribes or communities into one tribe or community; or
- (d) recognise the existence of any tribe or community;
- (e) proclaim a less formal township in respect of the areas referred to in paragraph (a);

Provided that the provisions of paragraphs (a), (b), (c), (d) and (e) shall not apply unless the Chief Minister or his delegate has consulted the people of the area to be affected by such definition, redefinition, constitution, division, amalgamation, recognition or less formal township.

3. Person deemed to be a member of a tribe or community within whose area he permanently resides

A person shall be deemed to be a member of a tribe or community within whose area he permanently resides: Provided that if a redefinition of the boundaries of the area of any tribe or community results in that a person resides within the boundaries of the area of a different tribe or community, such person shall, for a period of two years from the date of such resides redefinition be deemed to remain a member of his former tribe or community; Provided further that such person may, within the period of two years referred to in the first proviso, exercise an option as to whether he wishes to move to the area of his former tribe or community or to become a member of the tribe or community in whose area he is residing.

4. Resettlement residence

(1) No person shall—

(a) settle permanently in the area of a tribe or community of which he is not a member; Provided that a prior permission is obtained from the inkosi of his tribe or the iziphakanyiswa of his community, as the case may be, as well as the permission of the inkosi of the tribe or the iziphakanyiswa of the community in whose area he intends to settle permanently: Provided further he pays khonza fee to the inkosi or iziphakanyiswa of the area he intends settling permanently and also a valelisa fee to the inkosi or the iziphakanyiswa of whose area he is leaving.

(b) commit any act in the area of a tribe or community of which he is not a member unless it is permitted by custom.

(2) Any person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall on conviction be liable to a fine not exceeding R500 or five months imprisonment or to both such fine and such imprisonment.

CHAPTER 2

ESTABLISHMENT OF TRIBAL, COMMUNITY AND REGIONAL AUTHORITIES

5. Establishment of tribal, community and regional authorities

(1) The Minister may after consultation with the Cabinet—

(a) with due regard to Zulu law and custom—

(i) establish a tribal authority in respect of a tribe or two or more tribes;

(ii) establish a community authority in respect of a community or two or more communities.

(b) in respect of any two or more areas for which tribal or community authorities have been established, establish a regional authority:

Provided that no community, tribal or regional authority shall be established unless the Minister or his delegate consults that people in the area in respect of which such authority is to be established.

(2) A tribal, community or regional authority established in terms of subsection (1), is a juristic person.

(3) A tribal authority shall be established in respect of an area or areas assigned to the inkosi of the tribe concerned, and a community authority shall be established in respect of the area or areas assigned to the isiphakanyiswa of the community concerned.

(4) The establishment of a tribal, community or regional authority and the area or areas in respect of which it has been established, and any modification of such area or areas, shall be made known by notice in the Official Gazette, and a copy thereof shall on its mere production in any legal proceedings be prima facie proof, that the authority mentioned in the notice has been lawfully established for the area or areas so mentioned in accordance with the provisions of this Act, or in

the case of a modification or any area or areas, that the modification so mentioned has been lawfully effected in accordance with the provisions of this Act.

(5) The Minister may, after consultation with a tribal, community or regional authority, dissolve such tribal, community or regional authority, by notice in the Official Gazette and may make any order in respect of the disposal of any assets of the authority concerned as he deems fit.

(6) If a tribal or community government exists within a tribe or community, which functions according to the laws and customs observed by such tribe, or community such tribal or community government, as the case may be, shall, subject to isiphakanyiswa (7), deemed to be a tribal or community government established in terms of subsection (1).

(7) If a tribal or community government in terms of subsection (6) does exist, but it is deemed expedient by the Minister to replace such tribal or community government by a tribal or community government as referred to in subsection (1), the Minister may by notice in the Official Gazette direct that a tribal community authority be established in terms of subsection (1).

6. Constitution of a regional authority

(1) The executive body of a regional authority shall, subject to the provisions of subsection (2) consist of a chairman and an executive council comprising of so many councillors as may be determined by the Minister.

(2) The chairman and the councillors of a regional authority shall be elected or selected in the prescribed manner from amongst the amakhosi, iziphakanyiswa and councillors of the tribal or community authorities for the areas in respect of which such regional authority has been established: Provided that the Minister, after consultation with the Cabinet, confirms the election or selection of the chairman.

(3) The Minister may, in accordance with the regulations withdraw the appointment of any councillor or any member of a regional authority if he is satisfied that such councillor or member is negligent in the performance of his duties or that the removal of such councillor or member from his office is in the general interest of people residing in the area in respect of which the regional authority concerned has been established.

7. Powers, functions and duties of tribal and community authorities

(1) A tribal or community authority shall, subject to the provisions of this Act—

(a) generally administer the affairs of the tribe or community in respect of which it has been established;

(b) render assistance and guidance to its inkosi or isiphakanyiswa with regard to the performance of his functions, and exercise such powers and perform such functions and duties, including any of the powers, functions or duties conferred or imposed upon its inkosi or isiphakanyiswa under any law, as are in accordance with any applicable Zulu law or

custom or in the terms of any regulations required to be exercised or performed by such tribal or community authority;

(c) advise and assist the Government and any regional authority having jurisdiction in any area for which such tribal or community authority has been established, with regard to matters relating to the material, moral and social well-being of persons resident in that area, including the development and improvement of land within that area; and

(d) exercise such powers and perform such functions and duties as in the opinion of the Minister, falls within the sphere of tribal administration and as the Minister may assign to that tribal or community authority.

(2) Subject to the provisions of any regulation—

(a) a tribal or community authority shall exercise its powers and perform its functions and duties with due regard to the rules, if any, applicable in the case of similar bodies in terms of the Zulu laws or customs of the respective tribes or communities in respect of which such authority has been established;

(b) the inkosi or isiphakanyiswa, in respect of any tribal or community authority shall exercise his powers and perform his functions and duties, including any powers, functions and duties vested in him by virtue of any law, with due regard to such laws.

(3) No judgment, decision or direction given or order made by an inkosi, isiphakanyiswa or isekela lenkosi, in the exercise of jurisdiction conferred upon him by or under any law, shall be deemed to be invalid by reason of it having, in terms of subsection (1) and (2), been given or made by such inkosi, isiphakanyiswa or isekela lenkosi on the advice or with the consent or at the instance of a tribal or community authority and any judgment, decision or direction so given or order so made shall for all purposes be deemed to have been given or made by such inkosi, isiphakanyiswa or isekela lenkosi.

(4) A tribal or community authority may subject to the provisions of this Act appoint tribal constables to exercise such powers and perform such functions and duties as are conferred upon them by any applicable Zulu Law or any regulation made under section 36.

8. Powers, functions and duties of regional authorities

(1) A regional authority shall have power—

(a) to advise and make representations to the Government in regard to all matters affecting the general interests of persons within any area under the jurisdiction of such authority;

(b) subject to the provisions of any regulations, and to the directions of the Minister, to provide for—

(i) the establishment, maintenance, management and control of educational institutions, and the advancement of scholastic and other education;

(ii) construction and maintenance of roads, bridges, drains, dams, furrows and any works which it may consider necessary for purposes of sanitation or for ensuring satisfactory water supplies or for preventing or combating soil erosion;

- (iii) the suppression of diseases of stock by the construction, maintenance and operation of dipping tanks and in any other manner it may consider necessary;
- (iv) the establishment, maintenance, management and control of hospitals, clinics and other similar institutions;
- (v) the improvement of farming and agricultural methods generally;
- (vi) afforestation; and
- (vii) generally all such matters as in the opinion of the Minister are within the sphere of regional administration and as he may assign to such regional authority.

(2) A regional authority may make rules in regard to any matter referred to in subsection (1) (b), including rules prescribing fees for services rendered by such authority or rates payable by any specified class of persons in respect of services made available by such authority: Provided that no such rule shall have any force or effect unless it is approved by the Minister and made known by notice in the Official Gazette: Provided further that the Minister may, before approving of any rule, refer it back to the authority concerned for consideration and thereafter amend it in such manner as he may deem fit or make additional rules or amend or repeal any existing rules.

(3) A rule which is amended by the Minister before approval thereof under subsection (2) shall be deemed to have been duly made in the amended form by the regional authority concerned, and any additional rules made or amendment or repeal of an existing rule effected by the Minister in giving any such approval, shall be deemed to have been duly made or effected by that authority.

(4) Whenever a regional authority fails to make rules in regard to any matter referred to in subsection (1) (b) or (2), the Minister may by notice in writing direct that authority to make such rules and to submit such rules for his approval in terms of subsection (2), and if that authority fails to make such rules and to submit them for such approval within a period of six months after the date of the notice, the Minister may make such rules.

(5) Any rule made by the Minister under subsection (4), shall be deemed to have been duly made by the regional authority concerned.

(6) A regional authority shall have power to acquire and hold land or any interest in land as it may deem necessary for the purpose of performing its functions and duties.

9. Auditing of books and accounts of tribal, community and regional authorities

(1) The books and accounts of a tribal, community or regional authority shall be prescribed by the Minister by notice in the Official Gazette after consultation with the Auditor-General and shall be audited by the Auditor-General.

(2) The Auditor-General shall as soon as possible after an audit of the books and accounts of a tribal, community or regional authority transmit a copy of his report on the books and accounts of such tribal, community or regional authority concerned to the Secretary: Provided that the Auditor-

General may at any time, if he considers it desirable, submit a special report on any matter connected with his powers and duties under this Act to the Minister.

(3) In the execution of any audit in terms of subsection (1) of the books and accounts of any tribal, community or regional authority, the provisions of section 42 (4), (8), (9) (a) and (9) (c) (i) and (10), 45 (2), 47, 48 (1) (a) and 50 of the Exchequer and Audit Act, 1975 (Act No 66 of 1975) and no other provision of that Act shall apply mutatis mutandis, and in such application—

(a) any reference in the said section 42 (9) (c) (i) of this section to the Treasury shall be deemed to be a reference to any person or the holder of any office designated, for the purposes of this section by the tribal, community or regional authority concerned with the approval of the Minister; and

(b) any reference in the said section 45 (2) to a Minister shall be deemed to be a reference to the Minister.

10. Amounts to be paid to into treasury of a tribal or community authority

(1) There shall be paid into the treasury of a tribal or community authority—

(a) all fees and charges which in accordance with the recognised customs of any of the tribes or communities in respect of which such authority has authority been established, or in terms of any regulation, are payable for the benefit of any such tribe or community or of the tribal or community authority;

(b) all fines and fees collected by the inkosi, isekela lenkosi or isiphakanyiswa in the exercise of any civil or criminal jurisdiction conferred upon him by any law;

(c) the proceeds of any levy which may be imposed upon any such tribe or community or any of the members thereof in terms of any law other than this Act and every amount collected in respect of a fine imposed for a failure to pay any such levy;

(d) all amounts derived from any property owned by any such tribe or community;

(e) any moneys which may be assigned to such authority by the Minister out of any fund held by him for the benefit of any such tribal or community under any law;

(f) any moneys which the Legislative Assembly may appropriate for the purpose, and any donation made by any person for the benefit of any such tribe or community; and

(g) all other amounts derived from any source whatsoever for the benefit of any such tribe or community.

11. Proof of certain facts by affidavit

If in any judicial proceedings, it is relevant—

(a) whether any particular person is or has been a councillor or member of a tribal, community regional authority;

(b) whether any such authority or any councillor or member of such authority acted in respect of any particular matter in accordance with the law and custom observed by the tribe or community concerned, any document purporting to be an affidavit by any person who in that affidavit alleges—

(i) that he is in the service of the Government in a capacity specified in the affidavit;

(ii) that he has knowledge of the law and custom observed by the tribe or community concerned and that in consequence thereof he knows that the person concerned is or has been a councillor or member of the tribal or regional authority concerned or as the case may be; or that the law and custom concerned were observed in respect of said matter;

shall on its mere production in the said proceedings be prima facie evidence that the person concerned is or has been a councillor or member of the authority in question, or as the case may be, that the law and customs concerned were observed in respect of the said matter.

CHAPTER 3

AMAKHOSI, IZIPHAKANYISWA AND COUNCILLORS

12. Acknowledgement and appointment of amakhosi and iziphakanyiswa

The Minister may after consultation with the Cabinet recognise, appoint or depose any person as an inkosi for a certain tribe or an isiphakanyiswa for a certain community, as the case may be, in accordance with the provisions of this Act.

13. Ingonyama

The inkosi of the Usuthu Tribe is the paramount inkosi of the Zulus and is also known as the King of the Zulus, the Ingonyama or Isilo.

14. Amakhosi or iziphakanyiswa in council

(1) The executive government of any tribe or community is vested in its inkosi or isiphakanyiswa, acting on the advice of his tribal or community council, whatever the case may be, and, save where otherwise expressly stated or necessarily implied, any reference in this Act to any action by an inkosi or isiphakanyiswa shall be deemed to be a reference to an inkosi or isiphakanyiswa acting on the advice of his tribal or community council.

(2) In the event of a tribal or community council not yet having been established in respect of any tribe or community, whatever the case may be, its inkosi or isiphakanyiswa shall within 30 days from the promulgation of this Act or the date of the appointment of such inkosi or isiphakanyiswa, whichever date comes last, constitute a tribal or community council under section 15.

15. Appointment of councillors

(1) The appointment of councillors shall be made in accordance with the law and custom of the tribe or community and in the absence of any such law and custom, such appointment shall be made in such manner as the Minister may direct in writing: Provided that every Induna shall, by virtue of his office, be a councillor.

(2) Whenever any inkosi or isiphakanyiswa fails to establish his tribal or community council, under section 14 (2), the Minister may appoint the members of such council who shall be deemed to have been appointed by the inkosi or isiphakanyiswa concerned.

(3) Whenever the seat of any councillor becomes vacant it shall be filled as soon as possible and the provisions of subsections (1), (2), (4) and (5) shall mutatis mutandis apply with the filling of such seat.

(4) Any inkosi or isiphakanyiswa in whose tribal or community council a vacancy occurs shall forthwith report such vacancy to the magistrate of the district.

(5) Any inkosi or isiphakanyiswa shall inform the magistrate of the district of the full names, addressed and other relevant personal particulars of all his councillors within 30 days of his assumption of office or where a seat is filled in terms of subsection (3) the said particulars of such councillor must be furnished to the magistrate of the district within 30 days of the filling of such seat.

(6) Any inkosi or isiphakanyiswa may, subject to any other law, cancel the appointment of any councillor in accordance with the law and custom of his tribe or community: Provided that any appointment made by the Minister shall be cancelled by the Minister himself.

16. Recognition and appointment of successor to hereditary inkosi

(1) For the purposes of general succession as in section 81 and of the KwaZulu Act on the Code of Zulu Law, 1985 (Act No 16 of 1985) defined, the heir of a deceased hereditary inkosi shall be the person whom the Minister appoints or recognises under section 12 as successor to such deceased hereditary inkosi.

(2) Before deciding whom to appoint or to recognise under section 12 as inkosi in succession to a hereditary inkosi, the Minister may, in the event of any dispute arising or any other circumstance, direct an inquiry to be made by three advisers appointed by him.

(3) The advisers referred to in subsection (2) shall be selected by reason of their special knowledge of the language, customs and laws of the Zulus and shall report to the Cabinet through the Secretary.

(4) The mentioned advisers shall have all the powers conferred by law on a Magistrate's Court for the summoning of witnesses, their cross-examination under oath and to compel any person to produce documents in his possession or under his control.

17. Inquiry to be held in cases of dispute or dissatisfaction

(1) If it comes to the attention of the Secretary that there is a general dissatisfaction amongst the members of a tribe or community or that there is friction between certain tribes or communities or the amakhosi or iziphakanyiswa of tribes or communities, he or a person designated by him shall

conduct an inquiry into the matter and the findings of such enquiry shall be submitted to the Cabinet.

(2) In the exercise of functions referred to in subsection (1), the Secretary or his designate shall have all the powers conferred by law on a magistrate's court for the summoning of witnesses, their cross-examination under oath and to compel any person to produce documents in his possession or under his control.

18. Duties, powers, authority and functions of amakhosi and iziphakanyiswa

(1) Any inkosi or isiphakanyiswa shall—

- (a) enjoy the status, rights and privileges and be subject to the obligations and duties imposed upon his office by the recognised customs or usages of his tribe;
- (b) be entitled, in the due fulfillment of the functions to the loyalty, respect, support and obedience of every resident of the area for which he has been appointed;
- (c) in co-operation with the tribal or regional authority subject to such lawful orders or instructions as may, from time to time, be given to him by or through any competent representative of the Government carry on the administration of his area;
- (d) maintain law and order and report to the Government, without delay, any matter of importance or concern, including any condition of unrest or dissatisfaction;
- (e) exercise within his area, in relation to any resident his powers of arrest, search and seizure conferred upon him in his capacity as a peace officer in terms of the provisions of the Criminal Procedure Act, 1977 (Act No 51 of 1977); and
- (f) ensure the protection of life, persons and property and the safety of bona fide travelers within his area, and report forthwith to the magistrate of the district—
 - (i) the death of any person from violence or other unnatural causes;
 - (ii) the outbreak of any contagious or infectious disease;
 - (iii) any person or persons pretending to exercise witchcraft or divination;
 - (iv) any misuse of Government property;
 - (v) any irregular receipt or use of public moneys;
 - (vi) the holding of any unauthorised meeting, gathering or the distribution of undesirable literature in his area;
 - (vii) the commission of any offence, which does not fall to be dealt with under his own jurisdiction;
- (g) disperse or order the dispersal of any unauthorised assembly of armed persons or of any riotous or unlawful meeting or gathering;
- (h) make known to the residents of his area the requirements of any new law;
- (i) ensure compliance with all laws and the orders and instructions of a competent authority;
- (j) prevent cruelty to animals;
- (k) detain and, when so required by law, impound any livestock depastured illegally or found straying within, or introduced unlawfully or under suspicious circumstances into his area and report the fact to the competent authority;

- (l) not be or become a member or take part in any activities or in any manner promote the objects of any organisation whose aims are the unconstitutional overthrow of the Government and shall not encourage disobedience to or resistance against any law; and
- (m) generally seek to promote the interest of his tribe or community and of the region and actively support and initiate measures for the advancement of his people.

19. Remuneration and allowances payable to Amakhosi and iziphakanyiswa

(1)(a) Any inkosi or isiphakanyiswa shall, subject to the provision of sections 22 and 23, be paid such remuneration and allowances in respect of his duties at such rate as the Minister may from time to time, after consultation with the Minister of Finance, determine in the Official Gazette: Provided that no such remuneration shall be paid to the Ingonyama.

(b) Any inkosi or isiphakanyiswa shall, upon retirement from service on account of his age, infirmity or for any other profound reason, be paid a retirement allowance at such rate as the Minister may after consultation with the Minister of Finance determine in the Official Gazette. Provided that where an inkosi or iziphakanyiswa dies before retirement, a death gratuity equal to the amount which he would have been paid as a retirement allowance had he retired shall be paid out to meet the funeral expenses of such inkosi or iziphakanyiswa: Provided further that any balance remaining after payment of such funeral expenses shall be paid into the estate of such deceased amakhosi or iziphakanyiswa.

(c) In the determination of any remuneration under paragraph (a) or retirement allowance under paragraph (b) there shall be taken into account every period of satisfactory service, whether continuous or not, rendered by the inkosi or isiphakanyiswa: Provided that in the determination of a retirement allowance, no period of service in respect of which a retirement allowance or any other benefit whatsoever has been paid, whether before or after the commence of this Act, shall be included.

(d) any inkosi or isiphakanyiswa if he proceeds on duty to any office of the Government or attends any place outside his area, as the case may be, may be paid such allowances in respect of transport and subsistence expenses as maybe determined by the Minister after consultation with the Minister of Finance: Provided that no allowance in respect of transport or subsistence may be paid to any inkosi or isiphakanyiswa in terms of this Act, who is entitled to receive such allowances in terms of any other law or directive.

(2) The Secretary may, generally or in any particular case, direct that no allowance or only part of an allowance determined in terms of paragraph (d) of subsection (1), shall be paid.

20. Cession of remuneration or allowances of amakhosi or iziphakanyiswa

Except with the prior approval of the Secretary, an inkosi or isiphakanyiswa shall not cede to any person any salary, remuneration or allowances payable to him in terms of this Act or any other law.

21. Absence of inkosi of iziphakanyiswa

An inkosi or isiphakanyiswa shall make provision to the satisfaction of the Magistrate of the district for the proper performance of his duties during any absence from the area of his tribe or

community, whatever the case may be, without extra cost to the Government and may only absent himself from the area of his tribe or community for a period longer than 30 days with the prior approval of the Secretary.

22. Suspension of amakhosi or iziphakanyiswa

(1) The Minister or the Secretary if authorised thereto by the Minister either generally or in any particular case, may after consultation with the Cabinet suspend from office any inkosi or isiphakanyiswa who is suspected of having misconducted himself in any way.

(2) The Cabinet may at any time direct that the suspension of any inkosi or isiphakanyiswa be cancelled and such suspension shall automatically be cancelled after 180 days from the date of the order of suspension if such inkosi or isiphakanyiswa has not, by that time, been summoned to appear at an inquiry in terms of section 23.

(3) Any inkosi or isiphakanyiswa who has been suspended under this section, shall not be entitled to any remuneration in respect of the period of his suspension: Provided that the Minister may for good and sufficient reasons order payment to the said inkosi or isiphakanyiswa of the whole or portion of his emoluments.

23. Inquiry into misconduct

(1) Whenever there is a reason to believe that an inkosi or isiphakanyiswa is guilty of misconduct in that he—

- (a) fails or refuses to comply with any provision of this Act or other law with which it is his duty to comply;
- (b) disobeys, disregards or makes wilful defaults in carrying out a lawful order given to him by a competent officer or by conduct displays insubordination;
- (c) conducts himself in a disgraceful, improper or unbecoming manner;
- (d) uses intoxicants or drugs excessively;
- (e) abuses his powers or extorts, or by the use of compulsion or arbitrary means obtains any tribute, fee, reward or gift;
- (f) tries or punishes any person without being duly authorised thereto by or under any law;
- (g) becomes a member or takes part in the affairs of an organisation or association whose objects are subversive of or prejudicial to the government or law and order;
- (h) is negligent or indolent in the discharge of his duties; or
- (i) has been convicted of any offence;

the Minister shall, if the Cabinet has so directed, charge an inkosi or isiphakanyiswa in writing with such misconduct.

(2) The charge shall contain a direction calling upon the inkosi or isiphakanyiswa charged to answer in writing within a period specified in the direction, which shall not be less than 21 working days, to a person likewise specified, which written answer shall either be an admission or denial of the charge and may be accompanied by a written explanation of the circumstances surrounding the matter.

(3) If the inkosi or isiphakanyiswa charged denies the charge or fails to answer the charge referred to in subsection (2), the Minister shall appoint an officer or an allocated officer to inquire into the matter.

(4) The officer or allocated officer who is to hold the inquiry shall fix the date, time and place of the inquiry and shall give the charged inkosi or isiphakanyiswa reasonable notice in writing of the date, time and place so fixed.

(5)(a) The officer or allocated officer appointed to inquire into the charge may subpoena any person to attend the inquiry and to adduce evidence relating to the charge.

(b) Any person subpoenaed in terms of paragraph (a) who fails to attend the inquiry at the date, time and place as set out in the subpoena, shall be guilty of an offence and may on conviction be sentenced to a fine not exceeding R500 or imprisonment not exceeding a period of six months.

(6)(a) At the inquiry the inkosi or isiphakanyiswa charged shall have a right to be heard either personally or through a legal representative, to cross-examine any person called as a witness by the officer conducting the inquiry, to inspect any document produced in evidence, to give evidence himself and to call other persons as witnesses.

(b) The officer or allocated officer holding the inquiry shall keep a record of the proceedings of the inquiry.

(c) The failure of the inkosi or isiphakanyiswa charged to attend the inquiry, either personally or by a legal representative, shall not invalidate the proceedings.

24. Procedure after inquiry

(1) At the conclusion of the inquiry the officer or allocated officer holding the inquiry must find whether the inkosi or isiphakanyiswa is guilty or not guilty of the misconduct of which he has been charged and inform the inkosi or isiphakanyiswa of his finding.

(2) If the inkosi or isiphakanyiswa charged is found guilty in terms of subsection (1) the officer or allocated officer holding the inquiry shall forward to the Cabinet the record of the proceedings, a statement of his findings and the reasons thereof, as well as any observations, which he might wish to make.

(3) On receipt of the proceedings of enquiry the Minister may after consultation with the Cabinet—

(a) impose on the inkosi or isiphakanyiswa a fine not exceeding R500 which may be recovered from his remuneration in terms of section 19 in such instalments as the Cabinet may determine and shall be paid into the KwaZulu Revenue Fund; or

(b) suspend the inkosi or isiphakanyiswa from office without remuneration for a period not exceeding ten years; or

(c) impose on the inkosi or isiphakanyiswa any of the two punishments referred to in paragraphs (a) and (b) jointly; or

(d) dismiss the inkosi or isiphakanyiswa.

(4) The finding of the officer or allocated officer at the inquiry and the fine, suspension or dismissal by the Minister is final.

25. Powers of cabinet to summon inkosi or iziphakanyiswa

(1) Notwithstanding the provisions of this Act or any other law, the Cabinet may whenever it deems necessary call upon any inkosi or isiphakanyiswa in writing to appear before it in order to investigate—

- (i) any matter which is harming or is likely to harm his tribe or community; or
- (ii) any matter of importance or concern which directly or indirectly affects such inkosi or isiphakanyiswa in his capacity as the representative of the Government; or
- (iii) any other matter likely to prejudicially affect the administration of the Government in the area of his tribe or community.

(2) The Cabinet may, after it has investigated the matter—

- (a) direct the inkosi or isiphakanyiswa to take certain steps to resolve the problem, or
- (b) instruct the Minister to charge the inkosi or iziphakanyiswa in terms of section 23 whenever there is a reason to believe that such inkosi or iziphakanyiswa is guilty of misconduct.

26. Liability of tribe or community for delictual, contractual other obligations of the inkosi or iziphakanyiswa

A tribal or community authority is not liable to assist its inkosi or isiphakanyiswa, whatever the case may be, in the fulfilling of any of his personal obligations arising ex contractu, ex delicto or otherwise unless such assistance is approved by the Minister as well as the members of each tribe or community by majority vote at an imbizo which is specially called to consider the matter.

27. Limitations of judicial proceedings against inkosi or iziphakanyiswa, tribe or community in respect of land

No legal proceedings in regard to the ownership, occupation or acquisition of land in the area of a tribe or community shall be instituted against such tribe or such community or the inkosi or isiphakanyiswa of such tribe or community without the written approval of the Minister.

28. Settlement of civil disputes by amakhosi and iziphakanyiswa

(1) The Minister of Justice may—

- (a) authorise any inkosi or isiphakanyiswa recognised or appointed under section 12 to hear and determine civil claims arising from Zulu law and custom brought before him by the members of his tribe or community against members of his tribe or community; and
- (b) at the request of any inkosi or isiphakanyiswa upon whom jurisdiction has been conferred in terms of paragraph (a) authorise in writing an isekela lenkosi of such inkosi or isiphakanyiswa to hear and determine civil claims arising out of Zulu law and custom brought before him by members of the tribe or community of such inkosi or isiphakanyiswa against members of such tribe or community;

Provided that an inkosi, isiphakanyiswa or isekela lenkosi shall not under this section or any other law have power to determine any question of nullity, divorce or separation arising out of a marriage, or the state of a person's mental capacity.

(2) The Minister of Justice may at any time revoke in writing the authority granted in terms of subsection (1).

(3) A judgement given by such inkosi, isiphakanyiswa or isekela lenkosi shall be executed in accordance with the recognised customs and laws.

29. Hearing of criminal actions by the amakhosi and iziphakanyiswa

(1) The Minister of Justice may in writing confer upon any inkosi or isiphakanyiswa, recognised under section 12, or the isekela lenkosi of such inkosi or isiphakanyiswa at the request of such inkosi or isiphakanyiswa, jurisdiction to try and punish any citizen who has committed, in the area under the control of such inkosi or isiphakanyiswa, any offence in terms of Zulu law and custom or statutory law as may be specified by the Minister other than an offence referred to in the First Schedule to this Act.

(2) The procedure at any trial by an inkosi, isiphakanyiswa or isekela lenkosi of such inkosi or isiphakanyiswa under this section, the punishment, the manner of execution of any sentence imposed shall be in accordance with Zulu law and custom: Provided that in the exercise of the jurisdiction conferred upon him under subsection (2) an inkosi, isiphakanyiswa or isekela lenkosi may not impose any punishment involving death, mutilation, grievous bodily harm or imprisonment or impose a fine not exceeding:

- (i) R1 000 or one head of large stock; or
- (ii) R 600 or six head of small stock.

(3) The Minister of Justice may at any time revoke in writing the jurisdiction conferred upon an inkosi, isiphakanyiswa or isekela lenkosi in terms of subsection (1).

30. Hearing held in accordance with repealed sections of Black Administration Act, 1927 deemed to be lawful

Any hearing held in accordance with the provisions of the repealed sections 12 and 20 of the Black Administration Act, 1927 (Act No 38 of 1927) after it had been repealed, but prior to the coming into operation of this Act, shall be deemed to be lawful and any civil judgment so given or criminal sentence imposed shall be executed in the manner prescribed by such repealed sections.

CHAPTER 4 APPEALS IN CIVIL AND CRIMINAL CASES

31. Appeals in civil cases

(1) Any party to a law suit in which an inkosi, isiphakanyiswa or isekela lenkosi has given judgement in terms of section 28 may appeal therefrom to any magistrate's court which would have had jurisdiction had the proceedings in the first instance been instituted in a magistrate's court, and if the appellant has noted his appeal in the manner and period prescribed, the execution of the judgement shall be suspended until the appeal has been decided (if it was prosecuted at the time and in the manner so prescribed) or until the expiration of the mentioned prescribed period if the appeal was not prosecuted within that period, or until the appeal has been withdrawn or has lapsed: Provided that no such appeal shall lie in any case where the claim or the value of the matter in dispute is less than R50, unless the court to which the appellant proposes to appeal, has certified after summary inquiry that the issue involves an important principle of law.

(2) If a party appeals to a magistrate's court in terms of subsection (1) the said court may confirm, alter or set aside the judgement after hearing evidence by the parties to the dispute, or which is tendered on request by the court.

(3) Any confirmation, amendment or setting aside in terms of subsection (2) shall be deemed to be a decision of a magistrate's court in terms of provision of Chapter IX of the Magistrate's Courts Act, 1944 (Act No 32 of 1944).

32. Appeals in criminal cases

(1) Any person who is convicted and sentenced by an inkosi, isiphakanyiswa or isekela lenkosi in terms of section 29 may in the manner and within the period prescribed, appeal against such conviction and sentence to the magistrate's court in which district the trial took place.

(2) In hearing an appeal in terms of this section, the magistrate shall hear and record all available evidence, which is relevant to any question in issue and shall thereupon either-

(a) confirm or alter the conviction and—

(i) confirm the sentence imposed by the inkosi, isiphakanyiswa or isekela lenkosi and order that the said sentence be satisfied forthwith; or

(ii) set aside the sentence imposed by the inkosi, isiphakanyiswa or isekela lenkosi and in lieu thereof impose such other sentence as in his opinion the inkosi, isiphakanyiswa or isekela lenkosi ought to have imposed; or

(iii) in addition to the sentences referred to in subparagraph (i) and (ii) impose a sentence of imprisonment not exceeding three months which is to be served on default of compliance forthwith with the order or sentence made or imposed under subparagraph (i) or (ii); or

(iv) set aside the sentence imposed by the inkosi, isiphakanyiswa or isekela lenkosi and in lieu thereof impose a sentence of imprisonment not exceeding three months without the option of a fine; or

(b) uphold the appeal and set aside the conviction and sentence.

(3) The magistrate shall issue in respect of any person sentenced to imprisonment in terms of subsection (2) a warrant for his detention in a prison.

33. Procedure where fine cannot be recovered

(1) If a person fails to pay any fine imposed upon him in terms of section 29 the inkosi or isiphakanyiswa concerned may cause him to be arrested by the police or any other person who is authorised to do so in terms of section 334 of the Criminal Procedure Act 1977 (Act No 51 of 1977), and shall within 48 hours after his arrest bring or cause him to be brought before the magistrate in whose area of jurisdiction the trial took place.

(2) A magistrate before whom any person is brought in terms of subsection (1) may, upon being satisfied that the fine was duly and lawfully imposed and is still unpaid either wholly or in part, order such person to pay the fine or the unpaid portion thereof forthwith and if such person fails to comply forthwith with such orders, sentence him to imprisonment for a period not exceeding three months.

(3) A magistrate shall issue in respect of any person sentenced to imprisonment under this section a warrant for his detention in a prison.

34. Review of proceedings

(1) A magistrate of the district, where a hearing in terms of this Act was held, who is of the opinion that a conviction or sentence imposed, a judgment entered or an order made by an inkosi, isiphakanyiswa or isekela lenkosi at such a hearing is clearly not in accordance with the provisions of this Act or in accordance with justice and that the person so convicted and sentenced, or against whom a judgment has been entered or an order made will suffer prejudice may—

(a) set aside or correct such conviction, sentence, judgement or order; and

(b) convict and impose such sentence or enter such judgment or make such order as the inkosi, isiphakanyiswa or isekela lenkosi ought to have imposed, entered or made.

(2) The magistrate shall after having acted in terms of subsection (1) notify the inkosi, isiphakanyiswa or isekela lenkosi concerned of his decision.

(3) Any conviction or sentence imposed, or judgment entered or order made by the magistrate in terms of subsection (1) shall be deemed to have been imposed, entered or made by the inkosi, isiphakanyiswa or isekela lenkosi who originally conducted the hearing.

35. Rules

(1) The Minister may make rules to further regulate the procedure, which shall be followed at civil and criminal actions and appeals in terms of this Act.

(2) No rule or any amendment or repeal of a rule comes into operation, unless it is published in the Official Gazette at least one month before the date upon which the rule, amendment or repeal is envisaged to come into operation.

36. Regulations

(1) The Minister may make regulations, not inconsistent with this Act—

- (a) providing for the administration, supervision and control of the treasures and the keeping of the accounts of tribal, community and regional authorities, and for the audit of books and accounts of tribal, community and regional authorities which are not audited by the Auditor-General;
- (b) providing for the recognition, appointment and selection or election of councillors and members of regional authorities and the cancellation thereof;
- (c) prescribing the conditions of office of councillors and the periods and conditions of office of members of regional authorities;
- (d) providing for the calling of meetings of regional authorities, and prescribing the quorum for and procedure at such meetings, including the procedure in the event of the absence of the chairman from any such meeting, the method of voting at such meetings and the exercise of a casting vote by any person presiding at such meeting and the circumstances under which such a vote may be exercised;
- (e) providing for the appointment, conditions of service, discipline, retirement, discharge, pensioning and duties of officers and employees of regional authorities;
- (f) prescribing the times for the payment of rates or fees levied or prescribed under this Act, and the circumstances under which or the conditions subject to which any person may be exempted from liability for the payment thereof;
- (g) providing for procedure to subpoena witnesses at inquiries and civil and criminal hearings in terms of this Act;
- (h) providing for the appointment, conditions of service, discipline, retirement, discharge, pensioning powers, functions and duties of tribal employees;
- (i) providing for the establishment and administration of a less formal township or any other matter related thereto;

and generally any regulations which he is by this Act required or empowered to make, and any regulations, whether or not relating to any matter specifically mentioned in this subsection, which he may deem necessary in order to ensure the effective operation of this Act.

(2) Different regulations may be made in respect of different tribal, community or regional authorities, or in respect of different areas under the same authority or in respect of matters affecting different tribes or communities under the same authority.

(3) Any regulation made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of R100 or, in default of payment, imprisonment for a period not exceeding three months.

37. Repeal of laws and savings

The laws mentioned in the Second Schedule are hereby repealed to the extent set out in the third column of that Schedule: Provided that notwithstanding the repeal of the said laws—

- (a) every person who immediately prior to the commencement of this Act was a chief, headman or chief's deputy appointed under the Black Administration Act, 1927 (Act No 38 of 1927) shall be deemed to have been appointed under this Act as an inkosi, isiphakanyiswa or isekela lenkosi respectively;

(b) a regulation, rule or order issued, made or given under any such laws shall, in the area in which it was in force immediately prior to the commencement of this Act and so far as it is not inconsistent with the provisions thereof, continue in force until repealed under this Act by the proper authority;

(c) anything done or deemed to have been done under any provision of any such laws shall be deemed to have been done under the corresponding provision of this Act.

38. Short title and commencement

(1) This Act shall be called the KwaZulu Amakhosi and Isiphakanyiswa Act, 1990 and shall come into operation on a date fixed by the Minister by a notice in the Official Gazette.

(2) Different dates, which may be retrospective, may so be fixed in respect of different provisions of this Act.

FIRST SCHEDULE

OFFENCES, WHICH MAY NOT BE TRIED BY AN INKOSI OR ISIPHAKANYISWA UNDER SECTION 17(1):

Treason

Crimen laesae majestatis

Public violence

Sedition

Murder

Culpable homicide

Rape

Robbery

Assault with intent to do grievous bodily harm

Assault with intent to commit murder, rape or robbery

Indecent assault

Arson

Bigamy

Crimen injuria

Abortion

Abduction

Offences under any law relating to stock theft

Sodomy

Bestiality

Bribery

Breaking or entering any premises with intent to commit an offence either at common law or in contravention of any statute.

Receiving any stolen property knowing that it has been stolen.

Fraud

Forgery or uttering a forged document knowing it to be forged.

Any offence under any law relating to illicit possession of or dealing in precious metals or precious stones

Any offence relating to the coinage

Perjury

Pretended witchcraft

Faction fighting

Incest

Man stealing

Extortion

Defeating or obstructing the ends of justice

Any conspiracy, incitement or attempt to commit any of the above offences

SECOND SCHEDULE

LAWS REPEALED

Number and Year	Short Title	Extent of Repeal
Act No 38 of 1927	Black Administration Act, 1927	Sections 1, 2, 3, 4, 5
Act No 68 of 1951	Black Authorities Act, 1951	The whole
Act No 8 of 1974	KwaZulu Chiefs and Headmen's Act, 1974	The whole
Act No 16 of 1985	KwaZulu Act on the Code of Zulu Law, 1985	Sections 2, 3, 4, 5, 6, 8, 12, 13
Act No 22 of 1987	KwaZulu Chiefs and Headmen Amendment Act, 1987	The whole
Act No 11 of 1988	KwaZulu Act on Appeals from Courts of 1988 Amakhosi and Headmen	The whole
Act No 24 of 1989	KwaZulu Amakhosi and Headmen Amendment Act, 1989	The whole