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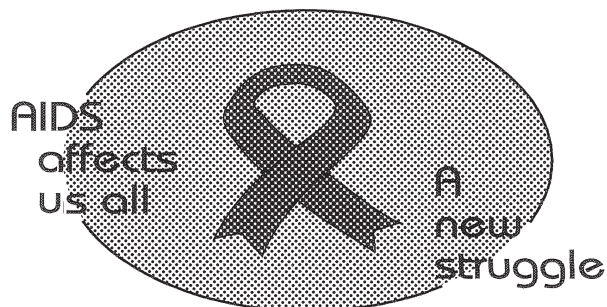
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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 150 OF 2017**PROVINCE OF THE EASTERN CAPE****PROVINCIAL NOTICE****OFFICE OF THE PREMIER****REGULATIONS ON THE ELECTION OF MEMBERS OF THE HOUSES OF
TRADITIONAL LEADERS IN TERMS OF THE EASTERN CAPE
TRADITIONAL LEADERSHIP AND GOVERNANCE ACT, 2017 (ACT NO. 1
OF 2017)**

The Premier of the Province of the Eastern Cape, acting in terms of section 85 of the Eastern Cape Traditional Leadership and Governance Act, 2017 (Act No. 1 of 2017) intends to make regulations on the election of members of Houses of Traditional Leaders in the Province as set out in the schedule hereto.

Any person who wishes to comment on the said regulations must submit such comments in writing, within 21 days from the date of publication hereof.

The comments must be submitted to –

**The Acting Head of the Department
Department of Cooperative Governance and Traditional
Affairs
Private Bag X0035
Bhisho
5605**

Attention : Mr M. Baza

Or

- (a) Hand delivered to: Tyamzashe Building-Phalo Avenue, Bhishe, 5605;**
- (b) sent by facsimile to: 0866647145/0862604257**
- (c) sent by electronic mail to thembie.ncume@eccogta.gov.za &
nangamso.mngoma@eccogta.gov.za or
nangamngoma@gmail.com**

**REGULATIONS FOR THE ELECTION OF MEMBERS OF THE EASTERN CAPE
HOUSES OF TRADITIONAL LEADERS**

ARRANGEMENT OF THE REGULATIONS

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1. Definitions

In these Regulations any word or expression to which a meaning has been assigned on the Eastern Cape Traditional Leadership and Governance Act, 2017 (Act No. 1 of 2017) shall have the same meaning and, unless the context otherwise indicates—

“**administrative area**” means an area of jurisdiction under the authority of headmanship or headwomanship and within the jurisdictional area of senior traditional leader in accordance with customary law;

“**area of jurisdiction**” means the area of jurisdiction defined for local municipality, district or metropolitan municipality in accordance with the applicable legislation;

“**Constitution**” means the Constitution of the Republic of South Africa Act, 1996.

“**Department**” means provincial department responsible for cooperative governance and traditional affairs;

“**electoral college**” means a college of the group of candidates selected or elected by various traditional councils through community meetings (imbizos) for the purpose of electing members of local houses in the Province;

“**Framework**” means the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“**local house**” means a local house established in terms of section 48 of the Eastern Cape Traditional Leadership and Governance Act, 2017 (Act, No. 1 of 2017);

“**members**” means members of traditional councils, local houses and provincial house of traditional leaders;

“**Provincial Gazette**” means the *Provincial Gazette* of the Province;

“**provincial house**” means a provincial house as contemplated in section 66 of the Act;

“**Province**” means the Province of the Eastern Cape established by section 103 of the Constitution;

“**secretary**” means an official responsible for administration of a traditional council;

“**the Act**” means Eastern Cape Traditional Leadership and Governance Act, 2017, (Act No. 1. of 2017);

“**traditional council**” means a council established in terms of section 6 of the Act;

2. Scope of applicability of the regulations

These Regulations regulates the process of electing members of houses of traditional leaders in the Province.

3. Interpretation

Any person interpreting or applying these Regulations must—

- (a) do so in a manner that gives effect to the constitutional declarations, guarantees and responsibilities contained in the Constitution;
- (b) take into account the Framework Act and the Act; and
- (c) take into account the traditions and customs applicable to the traditional community provided they do not contradict the legislative Framework and the Constitutions.

4. Establishment of local houses of traditional leaders

- (1) A local house of traditional leaders must be established for the jurisdiction of a district or metropolitan municipality with one or more traditional councils in accordance with section 48 of the Act.
- (2) The Premier must by a notice in the *Provincial Gazette* establish a local house for each jurisdiction of a district or metropolitan municipality with recognised traditional councils in accordance with the Act and Framework Act.

5. Membership of a local house

- (1) The members of a local house consist of—
 - (a) Kings or queens or their representatives;
 - (b) 60% senior traditional leaders; and
 - (c) 40% headmen or headwomen.
- (2) At least one third (1/3rd) of the members of a local house must be women: Provided that where it has been proven that this requirement cannot be met, the Premier may determine a lower threshold for a particular local house.
- (3) The total number of membership of a local house may not be less than five (5) and more than ten (10): Provided that the Premier may, if he or she

deems it necessary determine a higher number of members for a district or metropolitan municipality with more than thirty five (35) traditional councils, in accordance with the determination made by the Minister: Provided further that such higher number must not exceed 20 members.

- (4) Members of a local house must be elected by an electoral college established in terms of section 84 (1) of the Act.
- (5) An electoral college contemplated in sub-regulation (4) shall consists of number of members allocated in accordance with section 84 (2) of the Act.
- (6) A local house must be chaired by a senior traditional leader elected in accordance with section 56 of the Act.
- (7) The kingship or queenship shall have representative in a local house: Provided that at least 15 traditional councils under the jurisdiction of a kingship or queenship falls under the jurisdictional area of a local house concerned.
- (8) The membership of kings or queens or their representatives in a local house shall be in accordance with the formula as determined by the Premier.

6. Selection of candidates to constitute Electoral Colleges

- (1) The Premier must by a notice in the Provincial *Gazette* determine the date in which community meetings (*imbizos*) in all traditional councils in the Province must be held for the purpose of selecting or electing three (3) members of a traditional council to serve as members of an electoral college for a district or metropolitan municipality concerned.
- (2) The chairperson of a traditional council must convene a meeting of all administrative areas under the jurisdiction members of a traditional council which must be held on the date determined in terms of sub-regulation (1).
- (3) The meeting contemplated in sub-regulation (1) must be presided over by the Secretary of a traditional council or any person designated by the Regional Head responsible for the coordination of traditional leadership matters for the kingdom or region concern.
- (4) All meetings referred to in sub-regulation (1) must be held on the same day throughout the Province: Provided that if a traditional council is unable

to meet or comply with this requirement, a senior traditional leader of a traditional council concerned may determine a different date for the holding of a community meeting (*imbizo*) contemplated in sub-regulation (1), upon informing and obtaining an approval of the Premier: Provided further that, such a meeting must be held within seven days of the date determined in accordance with sub-regulation (1).

(5) The following procedure must be adhered to when electing or selecting candidates for the purpose of constituting an Electoral College—

- (a) The presiding officer can only start the meeting if fifty percent plus one (50%+1) of the total membership of a traditional council are present at the venue of the meeting.
- (b) The presiding officer must explain the purpose of the meeting and there after call for the nomination of names of candidates who qualifies to be nominated as candidates in terms of section 50 and 51 of the Act.
- (c) Before calling for the nomination, the presiding officer must read the disqualifying provisions from the Act, to all members present and ascertaining their eligibility to participate in the proceedings of the meeting.
- (d) All members of a traditional community must participate in the nomination and selection or election of candidates.
- (e) When conducting the nomination process, the presiding officer must make sure that nominated candidates are broadly representative of the traditional leadership positions as well as ensuring that women representative is achieved where practically possible.
- (f) Nomination of candidates must be conducted by show of hand and proceed in the following manner—
 - (i) the presiding officer must call for nominations;
 - (ii) a candidate whose name has been proposed must be seconded by at least one member of a traditional community; and
 - (iii) for a nomination to be accepted, a nominee must accept the nomination.

- (g) In instances where more than three candidates has been nominated as required by sub-regulation (6), the presiding officer must call for the election: Provided that voting shall be done by either a secret ballot or show of hands as may be determined by the presiding officer in consultation with all members.
- (6) Members of a traditional community must select or elect three traditional leaders, recognised in terms of this Act as candidates of an Electoral College to be established within the jurisdiction of a district or metropolitan municipality concerned.
- (7) A person is eligible to be elected as a candidate of an Electoral College if he or she—
- (a) is a traditional leader recognised in terms of the Act;
 - (b) has proven records of attending meetings of a traditional council concerned;
 - (c) has proven records of convening community meetings of his or her administrative area for the purpose of reporting or giving feedback to members of the community on the activities of a traditional council
- (8) The names and particulars of the nominee or elected candidates must be submitted to the Department through the regional offices of Traditional Affairs within seven days of the date of the meeting contemplated in sub-regulation (1).
- (9) The Premier must within fourteen (14) days of the receipt of the names and particulars of nominated or elected candidates publish such names and particulars by a notice in the *Provincial Gazette* for general information.
- (10) The notice issued in terms of sub-regulation (8) must at the same time seek to recognise nominees or elected candidates as members of the respective Electoral Colleges established within the jurisdiction of a district or metropolitan municipality.
- (11) Where practically possible, candidates of an Electoral College within the jurisdiction of a local municipality, kingdom or region may hold meetings to propose and agree on the names of traditional leaders to be elected to a local house as their representatives.

7. Qualification for membership of an electoral college

A person who qualifies to be a member of an Electoral College must be a—

- (a) member of a traditional council recognised in terms of this Act;
- (b) traditional leader recognised in terms of this Act; and
- (c) king or queen recognised in terms of the Framework Act; or
- (d) representative of the king or queen identified in accordance with regulation 8 sub-regulation (17) of these regulations.

8. Election of members of local houses by electoral colleges

- (1) All electoral colleges constituted in terms of regulation 6 (9) must meet on the same date at the seat of a district or metropolitan municipality to elect members of local houses of the district or metropolitan concerned.
- (2) The Premier must, by a notice in the *Provincial Gazette* determine the date in which Electoral Colleges must hold meetings contemplated in sub-regulation (1) for the purpose of the electing members of local houses in the Province.
- (3) All meetings contemplated in sub-regulation (1) must be presided by the person appointed by the MEC in terms of regulation 14.
- (4) The meetings contemplated in sub-regulation (1) must be open for the general public and other members of traditional councils: Provided that no member of the general public or traditional council must participate in the discussion and election processes.
- (5) The head of the department may identify other officials from Head Office or Regional Offices of Traditional Affairs to assist the person appointed as presiding officers by the MEC in recording the proceedings of the meeting.
- (6) Each member of an Electoral College is entitled to vote in a meeting of Electoral College concerned and shall be entitled for one vote.
- (7) The presiding officer of an Electoral College meeting must cause for the recording of the proceedings of the meeting in a manner he or she deems appropriate.
- (8) The presiding officer must outline the manner in which the meeting shall unfold and be satisfied that all the participants understood the proceedings of the meeting.

- (9) The presiding officer must present the formula with the total number of members of the local house concerned to be elected as determined by the Premier.
- (10) The presiding officer must therefore call for the nomination of candidates from among members of an electoral college.
- (11) Nominations must be done by a show of hands and must be conducted in the following manner—
- (a) the presiding officer must call for nomination of candidates;
 - (b) a person nominated as a candidate must be seconded by at least three (3) members of an electoral college representing different traditional councils;
 - (c) a person so nominated must rise and indicate whether he or she accept or decline the nomination;
 - (d) a nominated candidate may decline his or her nomination at any given time before the voting process commence;
 - (e) if the number of nominated candidates exceeds the total number of membership of a local house concerned, as determined by the Premier, by a notice in the *Provincial Gazette*, the presiding officer must call for the election.
- (12) The election contemplated in paragraph (e) must be done through a secret ballot.
- (13) Voting must be done in the following manner—
- (a) the presiding officer must prepare ballot papers containing the names of all nominated candidates in an alphabetical order in the same print with a space next to the name of each nominee to allow voters to make their cross (X).
 - (b) each voter must vote by making a cross (X) on the ballot paper next or opposite the name of the nominee he or she wishes to vote for;
 - (c) after making a cross, the voter must place the ballot paper in the ballot box and without delay leave the voting area;
 - (d) the presiding officer must provide ballot boxes and open them before the voting commence to demonstrate to the voters that the boxes are empty;

- (e) voting process must continue until all members eligible to vote have voted.
- (14) After all candidates has voted, the presiding officer must hand over the proceedings of the elections to the counting officer for the purpose of counting votes and announcing results.
- (15) Counting must be done in the following manner—
- (a) the counting officer must ensure that the counting of votes commence as soon as practical possible and continue uninterrupted until completed;
 - (b) the counting officer must, before counting commence in the presence of officials identified in terms of sub-regulation (5) and any other observers, examine whether the seals on the ballot box are intact on the sealed items;
 - (c) after examining the seals, the counting officer must open the sealed ballot box and must address any irregularities and discrepancies found, and if the material appears to have been unlawfully tampered with or is missing, the counting officer must investigate the matter;
 - (d) if no discrepancies are found, the counting officer must open the sealed box and proceed as follows—
 - (i) the counting officer must reject a ballot paper that indicates—
 - (aa) the identity of the voter;
 - (bb) a vote cast for more than one candidate;
 - (cc) no mark or that is marked is such a way that it is not reasonably possible to determine the voter's choice;
 - (dd) that it is not an original ballot paper issued by the presiding officer.
 - (ii) the counting officer must—
 - (aa) mark "rejected" on the back of each rejected ballot paper; and
 - (bb) file all rejected ballot papers separately; and
 - (e) the counting must be done manually.

- (16) Announcement of election results must be conducted in the following manner—
- (a) the counting officer must determine the results of the count of all ballot papers cast in the seat of an electoral college concerned and record the results accordingly;
 - (b) the counting officer must announce the provincial results of the electoral college concerned after completion of the ballot paper statement;
 - (c) once the results of each electoral college has been finalised, the presiding officers must forward the results and election report to the department; and
 - (d) the department must *gazette* names and particulars of the elected members of local houses through a notice in the *Provincial Gazette* within fourteen (14) days of the date of receipt of such names.
- (17) Where king or queen does not assume his or her seat in the local house and as such decide to appoint a representative the following procedure shall apply—
- (a) the king or queen or principal traditional leader must in writing inform the Premier of the particulars of his or her representative;
 - (b) such representative must be a recognised traditional leader and reside within the jurisdiction of a district or metropolitan municipality concerned;
 - (c) a person serving as a representative of the king or queen in a local house shall be an ex-officio member of a local house concerned and as such not eligible to be selected or elected as a representatives of their respective local houses in the Provincial House.
 - (d) the names and particulars of all representatives must be published through a notice in the *Provincial Gazette* together with the names and particulars of elected members of local houses.
- (18) A person representing a king or queen in a local house is responsible for the performance of functions of a local house concerned and is entitled to benefits, allowances and privileges enjoyed by other members of a local house.

- (19) When electing members of a local house, members of an Electoral College must ensure that the list of elected or selected members double the number of members representing each local municipality in a local house as prescribed in the formula.
- (20) All candidate elect in the reserve list shall be eligible to fill any vacancy in a local house: Provided that a candidate elect who obtained the highest number of votes in the elections contemplated in this regulation will fill the vacancy in a local house concerned.
- (21) A traditional leader who has been elected as part of the 20% of traditional leaders participating in a municipal council may be eligible to be elected as a member of a local house: Provided that he or she has resigned from participating in a municipal council before the date of the election: Provided further that he or she produce a signed resignation letter and a letter of acknowledgement of the resignation from the Office of the Speaker of the municipal council concerned to the presiding officer.

9. Election Ties

- (1) After the counting of all votes and before the announcement of results at the meeting of an Electoral College, the election ties shall be resolved by conducting a draw using envelopes with the names of the candidates who are involved in the tie placed therein
- (2) The draw of an envelope must be presided over and conducted by the presiding officer who will at his or her discretion select anyone to pick up an envelope.
- (3) A candidate whose name has been picked first must be declared elected.
- (4) Where the required minimum of one third representation of women has not been reached, the female candidate should be declared elected in order to satisfy the provisions of gender representation as contemplated in the Act: Provided that where only women candidates are involved in a tie the drawn must still be conducted.
- (5) The results of the draw shall form part of the results announced at an Electoral College meeting for that purpose.

10. By-election

- (1) Whenever a vacancy arises in any local house in terms of section 53 of the Act, such vacancy must be filled in accordance with the provisions of section 54 of the Act.
- (2) The Premier must, by a notice in the *Provincial Gazette*, determine the date in which by-elections must be held.
- (3) The Provincial House must facilitate the filling of vacancies that occur within the local houses, in accordance with the timeframes prescribed in the Act.
- (4) The provisions of regulation 8 applies with necessary changes for the conducting of by-elections contemplated in this regulation.
- (5) By-elections shall only be conducted with the members of Electoral College of the affected local house.

11. Swearing-in of members of local houses

- (1) Members of a local house must be sworn-in before assuming the functions of a local house, take an oath before a Magistrate having a jurisdiction.
- (2) Members of local houses must be sworn-in within 14 days from the date of the publication of the election results by the Premier by notice in the *Provincial Gazette*.
- (3) A local house must adopt such rules to provide for other positions and subcommittees as may be necessary to conduct its business.

12. Vacation of seat by a member of a local house

- (1) The seat of member of a local house becomes vacant if—
 - (a) the provision of section 53 becomes applicable to a member of a local house; or
 - (b) he or she is elected as part of the representatives of a local house concerned in the Provincial House.
- (2) A vacancy of a local house must be filled within 60 days.

13. Filling of vacancy

- (1) Whenever a seat of a member of a local house becomes vacant the chairperson of a local house concerned must within 14 days inform the Premier of such vacancy: Provide that any vacancy which occurs 6

months prior to the end of term of office of such a local house shall not be filled.

- (2) The Premier must, within 60 days after being informed of such vacancy, by a notice in the *Provincial Gazette*, convene a meeting of all members of the Electoral College concerned for the purpose of electing replacement.
- (3) When filling any vacancy in a local house, the reserve list of members elect shall be used to obtain a replacement to the vacancy: Provided that the replacement shall be drawn from the affected local municipality (constituency): Provided further that such candidate elect has obtained the highest number of votes in the election contemplated in regulation 8.
- (4) A member elected as a replacement to fill the vacancy shall hold the membership for the remainder of his or her predecessor's term of office.
- (5) Where there is no person available in the reserve list to take up the membership of a local house in terms of sub-regulation (3), then new elections must be conducted.
- (6) Election for the purpose of filling a vacancy shall be conducted in accordance with regulation 8 of these regulations.

14. Appointment of presiding and counting officers

- (1) Whenever a member of a local house is to be elected, the MEC responsible for Cooperative Governance and Traditional Affairs in consultation with the Premier may appoint—
 - (a) departmental officials consisting of General Managers and Senior Managers to preside over the election of members of local houses and count the results of election process; or
 - (b) officials from other sector departments in the Province to conduct, preside over the elections as well as count the result of election process: Provided that it has been proven that there is lack of capacity or shortage of staff on the part of the department.
- (2) Appointed presiding and counting officers shall be bound by these regulations in conducting elections and shall observe all the rules governing the conducting of elections of members of houses of traditional leaders to the extent that they are applicable in the elections.

15. Election of representatives to the provincial house

- (1) Members of local houses established in terms of section 48 of the Act, must meet on the same date at the seat of district or metropolitan municipality concerned to select or elect representatives to the Provincial House.
- (2) The Premier must, by notice in the Provincial *Gazette* determine the date in which members of local houses must hold meetings for the purpose of selecting or electing their representatives to the Provincial House.
- (3) The provisions of section 57 of the Act applies for the election of representatives of local houses in the Provincial House of Traditional Leaders.
- (4) When electing or selecting representatives to the Provincial House, members of a local house must ensure that—
 - (a) elected or selected representatives comes from different magisterial areas under the jurisdiction of a district or metropolitan municipality;
 - (b) elected or selected members are broadly representatives of different tribes falling under the jurisdiction of a district or metropolitan municipality; and
 - (c) sufficient number of women are elected or selected as part of the representatives to the Provincial House, unless the Premier after consulting with members of a local house establishes that there is insufficient number of women within a local house.
- (5) The total number of members to be elected as representatives of local houses in the Provincial House, must be done in accordance with the formula determined by the Premier by a notice in the Provincial *Gazette* for each local house.
- (6) The provisions of regulation 9 applies with the necessary changes for the appointment of presiding officers.
- (7) The provisions of regulation 8 applies with necessary changes for the selection or election of representatives of local houses to the Provincial House.

- (8) The presiding officer in consultation with chairperson of a local house concerned, must submit the names and particulars of the selected or elected representatives to the Premier within seven days of the date of meetings convened for the purpose or selecting of electing representatives to the Provincial House for *gazetting* purposes.

16. Membership and composition of the Provincial House

- (1) The provisions of section 68 of the Act, applies for the membership and composition of the Provincial House of Traditional Leaders in the Province.
- (2) All representatives as selected or elected by members of local houses, must attend the meeting convened by the Premier, on the date and venue determined by him or her for the purpose of the provisions of section 76 of the Act.

17. Vacation of seats

The provisions of section 73 of the Act, applies for the vacation of a seat by a member of the Provincial House.

18. Filling of vacancies

The provisions of regulation 13 of these regulations applies with the necessary changes for filling of vacancies in the Provincial House

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