

Mpumalanga, South Africa

Traditional and Khoi-San Leadership Act, 2019

Regulations for the Constitution and Reconstitution of traditional Councils in the Mpumalanga Province, 2024

General Notice 592 of 2024

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Regulations for the Constitution and Reconstitution of traditional Councils in the Mpumalanga Province, 2024 (General Notice 592 of 2024)

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Regulations for the Constitution and Reconstitution of traditional Councils in the Mpumalanga Province, 2024

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Chapter 1

Definitions, interpretation and scope of application

1 Definitions

In these Regulations any word or expression to which a meaning has been assigned in the principal Act shall have that meaning and, unless the context otherwise indicates—

"assigned' official" means a government official assigned in terms of regulation 8 to these Regulations;

"by-election" means an election of a member to fill a vacancy in the traditional council as contemplated in regulation 35 to these Regulations;

"candidate" means a person who has been nominated in terms of regulation 12 to these Regulations;

"day" means a working day, excluding weekends and public holidays, to the exception of the days allowed in the election timetable;

"department" means the provincial department responsible for traditional affairs;

"district" means the area of jurisdiction of a district municipality;

"election" means an election of a member of a traditional council as contemplated in regulation 9 of these Regulations;

"election timetable" means the election timetable as published by the Premier in terms of regulation 9 of these Regulations;

"independent appeals tribunal" means the appeals tribunal appointed in terms of regulation 7 to these Regulations;

"electoral Act" means the Electoral Act, 1998 ([Act No. 73 of 1998](#));

"houses" means the Local Houses and the Provincial House of Traditional Leaders;

"independent electoral agency" means the independent electoral agency appointed in terms of regulation 6 to these Regulations to conduct traditional council elections;

"Ministerial formula" means the formula for determination of the number of members of a traditional council as published in the government gazette number 50161 of 22 February 2024;

"nomination" means a nomination contemplated in regulation 12 to these Regulations;

"observer" means a person accredited to observe an election in terms of regulation 34 of these Regulations;

"officer" means—

- (a) a presiding officer;
- (b) a deputy presiding officer;
- (c) a voting officer;
- (d) a ballot counting officer;
- (e) an officer of the Department.

"permanent resident" means a person who permanently resides for a period of at least 5 years in an area which forms part of a traditional community;

"Province" means Mpumalanga Province;

"senior traditional leader" means a person recognized as a senior traditional leader in terms of section 8 of the Act, read with section 19 of the Mpumalanga Traditional Leadership and Governance Act, 2005;

"resident" means a person who is ordinarily resident in an area which forms part of a traditional community;

"MEC" means the Member of the Executive Council responsible for traditional leadership and governance matters in Province;

"the Act" means the Traditional and Khoi-San Leadership Act, 2019 ([Act No. 3 of 2019](#));

"traditional community meeting" means a consultative meeting in terms of these Regulations;

"traditional council" means a traditional council established in section 16 of the Act;

"traditional ward" means a village, administrative area, location or farm;

"voter" means a person who is eligible to vote in the traditional council elections in terms of these Regulations;

"voter's roll" means these segments of voters roll to be used in an election in terms of these Regulations and certified by the MEC in terms regulation [16\(4\)](#) to these Regulations;

"voting district" for purposes of these Regulations means an area comprising of one or part of the traditional ward or a combination of two or more traditional wards for which a voter's roll is compiled in terms of regulation [15](#) to these Regulations; and

"voting station" means a voting station within a voting district for voting purposes established in terms of regulation [15](#) to these Regulations;

2 Interpretation

A 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 of the Republic of South Africa, 1996;
- (b) take into account the provision of 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 Constitution.

3 Scope of application and interpretations of regulations

The Regulations apply to the selection of the 60% of the members of the traditional councils in terms of section 16(2)(c)(i) and the election of the 40% of members of traditional councils in terms of section 16(2)(c)(ii) of the Act.

Chapter 2 **Selections and elections**

4 Selection of members of the traditional council

- (1) At least 45 days prior to the expiry of the term of office of a traditional council the selection of members of the traditional council must be finalised.
- (2) The finalization of the selection process contemplated in subregulation (1) must be reflected in the timetable for it sets in motion a period of 21 days within which an election of the 40% membership must be held as stated in section 16(2)(d) of the Act.
- (3) The selection process must be conducted in the following manner—
 - (a) the senior traditional leader must, within the period stated in the election timetable, request the royal family to designate a consultative forum of not more than five members of the royal family who must convene on a proposed date and venue to assist the senior traditional leader with the selection process.
 - (b) the consultative forum meeting contemplated in paragraph (a) must be hosted and chaired by the senior traditional leader who must keep a record of such a meeting;
 - (c) the selection of members is subject to concurrence of the consultative forum;
 - (d) in case of no concurrence on the list of selected members, the senior traditional leader must submit the list of nominated candidates to the MEC who, after consulting with the traditional leader and the consultative forum, select the required number of members to fill the 60% quota of the traditional council;
 - (e) the names of selected candidates must be submitted to the Department for verification of compliance with the qualification criteria in terms of section 16(14) of the Act;
 - (f) the list of names of the selected candidates must be published in the *Provincial Gazette* within 14 days from the date of the royal family consultative forum meeting where the list of names was produced;
 - (g) within 14 days from the date of the traditional council elections, a consolidated list of names of selected and elected members must be submitted to the Premier.

5 Election 40 percent of members of traditional council

Each traditional community within the Province must conduct elections on the 40% percent of the members of the traditional council through a formal process as provided for in these Regulations.

6 Appointment of independent electoral agency

- (1) Before the determination of the elections and the declaration of the date or dates of elections, the department must appoint an independent electoral agency through the official transparent-process to conduct the elections, including the nominations of candidates for the election, the announcement of the election results and the finalisation of any disputes that may have arisen during the elections.

- (2) In appointing an independent electoral agency, the department must consider the following—
 - (a) the experience and familiarity of the agency with the electoral processes;
 - (b) the capacity of the agency to carry out its obligations;
 - (c) the familiarity of the agency with traditional communities and leadership;
 - (d) the familiarity of the agency with customary and traditional norms; and

7 Establishment of independent appeals tribunal

- (1) The MEC must immediately after the proclamation of the election date, establish an independent appeals tribunal consisting of not less than three people and not more than five people.
- (2) The members of the independent appeals tribunal must be fit and proper persons and must possess at least one or more of the following basic skills and competencies—
 - (a) knowledge of legal procedures;
 - (b) knowledge of election processes;
 - (c) knowledge of traditional leadership issues;
 - (d) knowledge of dispute resolution procedures; or
 - (f) any other competency as may be identified by the MEC.

[Please note: numbering as in original]

- (3) The MEC must appoint one of the members of the tribunal as the chairperson of the independent appeals tribunal
- (4) The independent appeals tribunal must adopt rules of procedure for the conduct of its business;
- (5) The independent appeals tribunal will have jurisdiction over all electoral matters and infringements of the code of conduct referred to in Annexure B, D and E and may take any decision and may impose any reasonable sanction having due regard to any applicable law and prescripts.
- (6) Any complaint must be lodged in writing in a form substantially similar to Appendix 5.
- (7) The tribunal must convene within two days of the complaint being lodged or the contravention being committed.
- (8) The term of office of the independent appeals tribunal must end after the announcement of the results or such other time as may be recommended for the proper finalisation of its responsibilities.
- (9) The powers of the independent appeals tribunal are as contemplated in Annexure D to these Regulations.

8 General management of elections

- (1) The Department must oversee and monitor the electoral process as well as the performance of the independent electoral agency and any incidental matters.
- (2) The elections must be managed by the independent electoral agency in order to ensure free and fair elections in terms of these Regulations and any contract entered between the Department and the independent electoral agency.
- (3) The Department must provide funding for the elections in accordance with the budget submitted by the independent electoral agency and approved by the Department in terms of the tender processes.
- (4) The Department must make available staff to assist the independent electoral agency in managing the elections.

9 Proclamation of, and preparation for elections

- (1) The MEC must proclaim the date or dates for the elections of traditional councils.
- (2) The proclaimed date or dates of the elections must be published in the *Provincial Gazette* at least one month before the actual election date or dates, allowing for the following processes to take place—
 - (a) proper communication processes with traditional communities;
 - (b) nominations, election and the announcement of results to happen within at least three months after publication of election timetable;
 - (c) submission of names of members of the newly elected members to the Premier or the MEC, as the case may be, at least two weeks before the gazette containing the names of the newly elected members of the traditional council is issued; and
 - (d) the gazetting of names referred to in paragraph (c) must be done at least 14 days after the results have been declared;
- (3) After the proclamation of the election date, the election timetable must immediately be compiled by the independent electoral agency in consultation with the election timetable may be amended by the MEC and must be published in the *Provincial Gazette*.
- (4) The independent electoral agency in consultation with the MEC if it considers it necessary for a free and air election, and it must be published in the *Provincial Gazette*.
- (5) The elections in general or for a particular traditional community may only be postponed before the proclaimed date of the election if the independent electoral agency, in consultation with the Head of the Department or the official assigned or designated by him or her is of the opinion that proceeding with the elections may grossly prejudice the administration of justice, order, peace and security, subject to approval by the MEC.

10 Qualification to vote

A person who wishes to vote in the elections of any traditional council must—

- (a) be a citizen of the Republic of South Africa;
- (b) be a resident of the traditional community concerned;
- (c) be in possession of a valid identity document;
- (d) be eighteen years of age or older; and
- (e) be registered on the traditional community's voter's roll.

11 Qualification for nomination

A person who wishes to stand for and accept nomination as a candidate in the traditional council election of any traditional community must—

- (a) be a citizen of the Republic of South Africa;
- (b) be a permanent resident within the traditional community concerned;
- (c) be eighteen years of age and above;
- (d) be in possession of an identity document;
- (e) be registered on the voters' roll of the community concerned;

- (f) not have been previously convicted and sentenced to an effective period of imprisonment of twelve months or more without the option of a fine for an offence relating to dishonesty, incitement or any other offence involving violence and public disorder;
- (g) not be a serving office bearer of a political party or a political movement;
- (h) not be a member of any municipal council, provincial or national parliament or an employee of any Government Department; and
- (i) not have been nominated by the senior traditional leader as part of the 60% selected members for the traditional council.

Chapter 3 **Processes and procedure of elections**

12 Nomination procedures for 40 percent quota members of traditional council

- (1) A senior traditional leader must convene a meeting of a traditional community where the senior traditional leader will announce the list of names of the selected members of the traditional council and the independent electoral agency will announce the number of council positions as per Ministerial Formula to be contested in the election and declare the commencement of the nominations period and explain the nomination procedures
- (2) Each nominated candidate must acknowledge and confirm acceptance of the nomination by completing the relevant form of acceptance of nomination using the form in Appendix 1, which must contain:—
 - (a) the signature or mark of the nominee;
 - (b) the signature of the independent electoral agency officer;
 - (c) signatures of the two persons seconding the nomination;
 - (d) the name/s and surname of the candidate as they appear on the identity document;
 - (e) the identity number of the candidate;
 - (f) any other name or non-offensive nickname by which the nominee is known in the community;
 - (g) the physical address of the candidate including traditional ward or village;
 - (h) the date of the nomination;
 - (i) confirmation or declaration of acceptance of the code of conduct, nomination to stand as a candidate and that the nominee understands that the nomination is valid only for that specific round of elections and not any other subsequent or previous election or by-election; and
 - (j) contact details of the nominee.
- (3) The independent electoral agency must record the proceedings of the traditional community meeting and compile the preliminary list of candidates for the traditional council upon closure of the nominations period.
- (4) The independent electoral agency shall publish the preliminary list of candidates for the community to scrutinise and shall hand over the said lists to the Department to verification compliance of the nominated candidates with the eligibility criteria set out in regulation [11](#) above.
- (5) During the public scrutiny period the independent electoral agency must receive objections, if any, for processing and determination, and prepare reports on the compliance of each nominated

candidates, and allow for the period of appeals, if any, to the independent appeals tribunal to run its course before producing the final list of candidates.

- (6) Decisions of the independent electoral agency on objections and on lack of compliance with the eligibility criteria, and of the independent appeals tribunal must be communicated to the affected individuals.
- (7) Upon closure of the nominations period the independent electoral agency shall publish the final list of candidates to contest the traditional council elections.
- (8) The period of the nominations process including the fulfilment of its procedures must be provided in the Proclamation of the date of the elections and shall be reflected in the elections timetable.
- (9) The MEC must have the elections timetable setting out the time periods allocated for the electoral procedures as indicated in Annexure 1 to these Regulations, published in the *Provincial Gazette*.
- (10) Any candidate nomination submission may be disqualified on the following grounds—
 - (a) failure to submit a fully completed and compliant nomination form;
 - (b) failure to submit the nomination form on time stipulated in the election timetable;
 - (c) failure of the nominee to meet the qualification criteria stated in Regulation 11 above;
 - (d) confirmation of an objection lodged against a nominated candidate; or
 - (e) general non-compliance with nomination procedures.

13 Objections to nominations

- (1) Any person may object to the nomination of any candidate on the following grounds—
 - (a) the candidate is not qualified to stand for the elections;
 - (b) the nominated candidate did not formally accept the nomination as prescribed in these Regulations; and
 - (c) The candidate did not sign or undertake to be bound by the code of conduct.
- (2) The objection must be lodged with the independent electoral agency within the period stipulated in the election timetable in a form as appears in Appendix 4 and promptly served on the candidate;
- (3) Depending on the determination of the independent electoral agency, the objector or the candidate may lodge an appeal with the Independent Appeals tribunal against the decision of the independent electoral agency within the time period prescribed in the election timetable whereupon the independent appeals tribunal shall inform the appellant, the candidate where applicable, and the independent electoral agency of its decision.

14 Candidate certificates

- (1) Soon after publishing the final list of nominated candidates, the independent electoral agency must convene a workshop for the candidates in order to—
 - (a) accredit and issue candidates with certificates of candidature;
 - (b) brief them about the code of conduct;
 - (c) agree on the sequential list of candidates on the ballot paper;
 - (d) agree on the design of the ballot paper;
 - (e) accredit the candidate agents; and
 - (f) declare the campaigning period open.

15 Delimitation of voting districts

- (1) With the technical assistance of the independent electoral agency and administrative guidance from traditional councils, the Department may delimit traditional council areas into voting districts within and/or across village boundaries relying, *inter alia*, on the traditional council maps and independent electoral commission delimitation data to determine the number of voting stations per traditional community.
- (2) The boundaries of each village must be determined in accordance with the provisions of Section 61 of the Electoral Act, 1998 ([Act 73 of 1998](#)).
- (3) The Department must establish one or more voting stations, and mobile voting stations where required, or only mobile voting stations, in each village in which the election will be held.
- (4) Delimitation must:—
 - (a) subdivide the jurisdictional area of the traditional council into villages; and
 - (b) define a traditional ward to be a village;
 - (c) where the size of the village so requires, establish more than one voting station using subregulations (1) and (2) above.
- (5) A voting station must be established within traveling distance of the residents of a traditional ward, failing which the independent electoral agency must determine the need to establish additional voting or mobile stations.
- (6) By not later than the relevant date stated in the election timetable, the independent electoral agency must give notice that copies of a list containing the address of each voting station inside the traditional council will be available for public inspection.
- (7) Each voting station must generally comply with the provisions of section 64 of the Electoral Act and regulations made in terms of that Act.

16 Appointment of election staff

- (1) Each voting station shall be managed by efficient and competent election staff members appointed by the independent electoral agency from within the traditional community where the elections will take place.
- (2) In appointing the election staff members, the independent electoral agency must exercise fairness, equity and equality and avoid practices that may be viewed as bias, nepotism or favouritism.
- (3) To qualify for appointment as an election staff member each person must prove that:—
 - (a) She/he is not an agent for any candidate who has been nominated to contest the elections;
 - (b) She/he is not a candidate in the election;
 - (c) She/he does not hold political office in any political party;
 - (d) She/he is not a member of any legislature; and
 - (e) She/he meets the academic and other criteria set by the independent electoral agency.
- (4) Each voting station must be staffed by the following officials—
 - (a) the presiding officer;
 - (b) the deputy presiding officer;
 - (c) not less than three other staff members including voting and counting officers.

- (d) Voting and counting officers are responsible for all activities within each voting station including but not limited to:—
 - (i) verification of the registration status of each voter;
 - (ii) stamping and issuing of ballot papers;
 - (iii) marking of voters' left thumb nail with indelible ink;
 - (iv) assisting voters who need assistance;
 - (v) ensuring that cast ballots are deposited into the ballot box by voters;
 - (vi) ensuring that full ballot boxes are sealed and stored in a secure place in the voting station;
 - (vii) reconciling voting materials supplied to each voting station; and
 - (viii) counting of ballots papers.
- (5) The presiding officer must—
 - (a) manage, co-ordinate and supervise the voting proceedings at the voting station;
 - (b) take reasonable steps to ensure the orderly conduct of voting proceedings at the voting stations;
 - (c) may order a security member to assist in ensuring orderly conduct;
 - (d) may exclude persons for valid reasons from the area within the boundary of the voting station; and
 - (e) make all determinations, recommendations and decisions regarding disputes and any other matters relating to the voting proceedings within the voting station including the decision whether a dispute should be referred to the independent appeals tribunal appointed in terms of these Regulations.
- (6) Election staff members must subscribe to the code of conduct as set out in Annexure B to these Regulations.
- (7) The independent electoral agency may at any time terminate the appointment of any election staff member that contravenes the code of conduct as set out in Annexure B to these Regulations, provided that such termination is in line with applicable labour legislation.
- (8) The independent electoral agency is responsible for the training of election staff members deployed at each voting station and must equip them with the voting materials set out in Annexure C to these Regulations.
- (9) Election staff members will be appointed by and be responsible to the independent electoral agency which will make contractual arrangements with the election staff members, and no liability arising out of this contractual arrangement shall accrue against the Department.

17 Election materials

The independent electoral agency must ensure the availability of sufficient voting materials as set out in Annexure C to these Regulations, including equipment deemed necessary for the successful conduct of the elections

18 Voter registration and compilation of the voters' roll

- (1) The independent electoral agency must compile the voters' roll for each village within the traditional council where elections are to be conducted, provided that the Department ensures that

the affected communities are sufficiently informed of what is required of them and of the date and venues of voter registration.

- (2) Any South African citizen of 18 years or above who resides within the village of a traditional council where elections are to be held is qualified to register upon presenting a valid South African identity document including a temporary identity document issued by the Department of Home Affairs.
- (3) In compiling the Voter's Roll, the independent electoral agency must consider the provisions of Chapter 2 of the Electoral Act.
- (4) The Voter's Roll must be certified by the MEC on the date stipulated in the election timetable.

Chapter 4 **Voting procedure and management of results**

Part I – Voting

19 Hours of voting

The voting hours on election day must be from 07h00 to 19h00 unless otherwise determine by notice in the *Provincial Gazette*.

20 Outer boundaries of voting stations

- (1) On the voting day, after consultation with the senior traditional leader, candidate agents and members of security services, if available, the presiding officer must determine the outer boundaries of the venue of the voting station before voting commences.
- (2) The presiding officer must demarcate the outer boundary of the voting station by marking the outer boundary using visible signs, markers or demarcation tape along the boundary line to ensure that the outer boundary is visible to anyone at the voting station.

21 Mobile voting stations and special votes

- (1) To ensure free and fair elections the independent electoral agency may decide to use mobile voting stations in addition to or instead of a fixed voting station and must give proper public notice of all intended routes, estimated stopping times and venues of the mobile voting stations.
- (2) The independent electoral agency must ensure that information on the institution of the mobile voting station is widely publicised within the affected communities.
- (3) The same procedures outlined in regulation 20 and 21 of these Regulations must be followed when a mobile voting station is used.

22 Special votes

- (1) A voter who is unable to cast his or her vote on a voting day at a voting station due to physical infirmity or disability must apply to be afforded the opportunity to cast a special vote at a place where he or she resides.
- (2) The application for a special vote must be done by no later than the date stated in the election timetable, in a prescribed written application form provided by the independent electoral agency.

23 Initial voting process

- (1) Immediately before opening a voting station for voting, the presiding officer must show all accredited observers and candidates present that each ballot box to be used at that voting station is empty.

- (2) If all persons present are satisfied that a ballot box is empty, the presiding officer must seal that box by means of a seal designed and supplied to the presiding officer for that purpose by closing all openings of the ballot box except the slot to allow the completed ballot papers to be deposited.
- (3) The presiding officer must confirm the availability of all required materials, namely ballot papers, ballot stamp, indelible ink, segment of the Voter's Roll, voting pen and the voter verification device, and all the required forms, seals, stationery and staff.

24 Voting procedures

- (1) A voter may vote only once for each position that is being contested in an election only at the voting station in the village and voting district in which that voter is registered to vote.
- (2) A voter may vote at a voting station on production of that voter's identity document to the presiding officer or a voting officer at the voting station and if that voter's name is on the certified segment of the voters' roll for the village and voting district for which that voting station is established.
- (3) When a voter produces an identity document to a presiding officer or voting officer, that officer must examine the identity document and determine whether—
 - (a) the voter is the person described in that identity document;
 - (b) the voter's name appears on the certified segment of the Voters' Roll for the village concerned; and
 - (c) the voter has not already voted in the election.
- (4) If the presiding officer or voting officer is satisfied that the voter has satisfied the requirements of subregulation (2) above, such officer must—
 - (a) record that the voter is regarded as having voted at that voting station;
 - (b) mark the hand of the voter as described in regulation 24;
 - (c) stamp the back of the ballot paper with the official stamp for the election; and
 - (d) hand the ballot paper to the voter.
- (5) Once the voter has received a ballot paper marked in terms of subregulation 4 above, the voter must:—
 - (a) be ushered into an empty voting compartment;
 - (b) mark the ballot paper in secrecy in a way that clearly indicates the candidate/s the voter is voting for;
 - (c) fold the ballot paper to conceal the voter's choice;
 - (d) place the ballot paper in the ballot box; and
 - (e) leave the voting station without delay.

25 Assistance to voters

- (1) A presiding officer or a voting officer, may allow a voter to be assisted to vote, but only if—
 - (a) the voter requires assistance due to physical disability;
 - (b) the voter has requested to be assisted by a specific person; and
 - (c) the presiding officer is satisfied that the person rendering such assistance is—
 - (i) at least 18 years old; and

- (ii) is not an observer, an agent or a candidate.
- (2) The presiding officer or a voting officer, at the request of a voter who is unable to read, must assist that voter to cast a vote and provide such assistance in the presence of -
 - (a) an accredited observer, if available; and
 - (b) another voting officer
- (3) In applying these Regulations, the secrecy of the ballot must always be observed

26 Issuing of new ballot papers

- (1) If a voter accidentally marks a ballot paper in a way that does not indicate for whom the voter wishes to vote and the ballot paper has not yet been placed in the ballot box, the voter may return that ballot paper to the presiding officer or a voting officer.
- (2) Upon receiving the ballot paper from a voter, the presiding officer or voting officer must mark "cancelled" on the back of the ballot paper and file it separately and thereafter hand the voter a new ballot paper.

27 Marking of hand of voter

- (1) The hand of a voter must be marked by drawing a short line on the voter's left thumb nail with visible indelible ink.
- (2) If the voter does not have a left thumb or thumb nail or if it is impractical due to injury, disease or any other cause to mark, then any one of the left-hand or right-hand fingers and nails must be so marked.
- (3) If for any of the reasons referred to in subregulation (2) above, no finger and nail of a voter can be marked, the presiding officer must keep a record of that voter's name, address, identity number and the reasons why the voter's hand could not be marked.

28 Closing of balloting

- (1) At exactly 19h00 the hour of closing the voting proceedings, the presiding officer shall announce the closure of the voting station: provided that the voters that are on the queue shall be allowed to vote.
- (2) When all voters have cast their ballot, the presiding officer must ensure that it is only accredited persons that are allowed to remain in the voting station while closing procedures and preparations for counting are underway.

Part II – Voting closure and counting procedures

29 Sealing of ballot boxes

- (1) The presiding officer, in the presence of any observers and candidates present, must as soon as a ballot box is full, seal the ballot box by closing the opening of the ballot box with a seal and after the last vote has been cast, similarly seal the last ballot box and any unused ballot boxes.
- (2) A sealed ballot box must remain sealed inside the voting station until opened for the counting of votes.

30 Completing of ballot paper statement

- (1) As soon as practicable after a voting station has been closed for voting, the presiding officer, in the presence of any observers and candidates present, must—
 - (a) complete a ballot paper statement on a form similar to Appendix 2 reflecting the number of:—
 - (i) ballot boxes entrusted to that presiding officer;
 - (ii) used ballot boxes;
 - (iii) unused ballot boxes;
 - (iv) ballot papers entrusted to that presiding officer;
 - (v) issued ballot papers;
 - (vi) unissued ballot papers;
 - (vii) cancelled ballot papers; and
 - (viii) spoilt ballot papers.
 - (b) seal each unused ballot box entrusted to that presiding officer;

Seal in separate containers:—

- (i) the certified segment of the voters' roll;
- (ii) the unused ballot papers entrusted to that presiding officer;
- (iii) the cancelled ballot papers; and
- (iv) the written record of any objections concerning voting.

31 Counting procedures of ballot papers cast

- (1) The counting officer must ensure that the procedures provided for in these Regulations are complied with and vote counting commence as soon as practicable after the voting station is closed for voting and continue uninterrupted until such counting are completed.
- (2) The presiding officer may act as the ballot counting officer, and before counting commences, the ballot counting officer must examine whether the seals are intact on the sealed items.
- (3) After examining the seals, the counting officer must open all the sealed ballot boxes and containers and must deal with any irregularities and discrepancies found, and if any of the voting material appears to have been unlawfully tampered with or is missing, the counting officer must call in the assistance of a member of the security forces to investigate the matter and to assist in the search for any missing voting material.
- (4) If no irregularities are found, the ballot counting officer must open all the used sealed ballot boxes and proceed as follows—
 - (a) the counting officer must reject a ballot paper that indicates—
 - (i) the identity of the voter;
 - (ii) votes cast for more than the permitted number of vacancies;
 - (iii) no mark or that the ballot paper is marked in such a way that it is not reasonably possible to determine the voter's choice;
 - (b) the official stamp is not appearing on the back of the ballot paper; or

- (c) that it is not an official ballot paper.
- (5) The counting officer must—
 - (a) mark “rejected” on the back of each rejected ballot paper; and
 - (b) file the rejected ballot papers separately.
- (6) The agent may object to any irregularity in the sorting of the ballot papers in terms of subregulation
- (7) The objection contemplated in subregulation (6) must be made to the counting officer in the prescribed manner at any stage before the counting officer has completed the results form.
- (8) An agent may object to an alleged inaccuracy in the counting of the votes or the determination of a result.
- (9) The ballot counting officer must decide the objection in the prescribed manner and whether to order a recount.
- (10) The counting officer must notify the objector and any other parties involved in the objection, of the decision made in terms of subregulation (9) above.
- (11) If the counting officer orders a recount, the counting officer must determine afresh the result.
- (12) An appeal against the decision of the counting officer may be noted with the independent appeals tribunal in the prescribed manner and time.
- (13) The counting officer must keep a written record in the prescribed manner of each objection in terms of subregulation (7) and each decision in terms of subregulation (9) above.

Part III – Management of Results

32 Issuing of preliminary result

- (1) The ballot counting officer must determine the result of the count of all the ballot papers cast in that voting station and record the result by completing a result form substantially similar to Appendix 3, reflecting the result of the count in respect of the election conducted at the voting station.
- (2) The counting officer must announce the provisional result of that voting station concerned after completion of the result form.
- (3) Once the counting officer has complied with subregulation (1), the counting officer must seal all the voting material, including the used and unused ballot papers, together with the result form, in separate containers and deliver such containers to the Results Transmission Centre at the designated subdistrict.
- (4) Once the results of each voting station in each results transmission centre have been obtained, the results transmission centre will forward all its results to the district results centre which will tally the results for each traditional council within its jurisdiction and transmit such results to the provincial results centre to enable the independent electoral agency to declare the provisional results and to announce final results at a traditional community meeting called by the senior traditional leader for that purpose.
- (5) The traditional community meeting contemplated in subregulation (4) must be held within seven days after the independent electoral agency has declared the provisional results.
- (6) The name of the person who becomes a member of the traditional council in terms of this regulation must be published in the *Provincial Gazette*

33 Election ties

- (1) After the counting of all votes and before the announcement of results at a traditional community meeting, election ties shall be resolved by conducting a draw using identical 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 by the senior traditional leader and conducted by the independent electoral agency which at its discretion shall select anyone present to pick an envelope.
- (3) A candidate whose name is picked first must be declared elected.
- (4) Where the required minimum of one third of women representatives has not been reached, the female candidate should be declared elected in order to satisfy the provisions of gender representatives outlined in the Act provided that where only women candidates are involved in a tie the draw must still be conducted.
- (5) The results of the draw shall form part of the results announced at a traditional community meeting convened for that purpose.

34 Election disputes

- (1) Where any interested party, including an observer or candidate wishes to lodge a complaint regarding the procedures or processes of the election or the results of the elections he or she must do so by lodging such complaint in writing with the presiding officer at the voting station.
- (2) The presiding officer must seek to resolve the dispute through mediation or negotiation failing which the presiding officer must take a decision.
- (3) The presiding officer must record the objection and his or her decision and inform the objector and any other party involved or affected verbally of the decision taken.
- (4) Where the objector is still not satisfied with the decision of the presiding officer the objector may lodge an appeal within 24 hours with the independent appeals tribunal as established in terms of regulation 7 of these Regulations.

Chapter 5 **General provisions**

Part I – Filling of vacancies

35 By-elections

- (1) Whenever a vacancy arises in any traditional council in terms of the Act, and subject to subregulation (2) and (3) under this regulation, the vacancy occurring in the traditional council must be filled by the candidate who got the next highest number of votes in the election in terms of these Regulations.
- (2) In the event that a female member of the traditional council caused the vacancy to arise, the next available female candidate on the remaining list of candidates who received the highest number of votes in the election in terms of these Regulations must fill the vacancy.
- (3) Where the next candidate who obtained the highest number of votes in the election in terms of these Regulations is for whatever reason not available to fill the vacancy, the next person with the highest number of votes will become a member of the traditional council.
- (4) The name of the person who becomes a member of the traditional council in terms of this regulation must be published in the *Provincial Gazette*.

- (5) Where a tie exists among the candidates on the list, such a tie must be resolved in terms of regulation 33 to these Regulations.
- (6) Where no person is available to take up the membership of a traditional council in terms of this regulation, then a new election must be conducted in terms of these Regulations.
- (7) In the event that a new election must be conducted, the Premier must proclaim the date for the by-election in a *Provincial Gazette* and allow for the required number of days to give effect to the election timetable.
- (8) Once the date of the election has been proclaimed, the date must also be published in a newspaper circulating in the area where the by-election is held.
- (9) The voter's roll to be used for the by-election is the voter's roll as it exists on the date that the Premier proclaims the date of the by-election but only those segments of the voter's roll for those traditional council affected by the vacancy.
- (10) The councilor elected at the by-elections must be elected for the remainder of the term of office of the existing traditional council.

36 Election observers and candidate agents

- (1) Any person that wishes to observe the traditional council elections must make an application to the assigned official, in respect of an election conducted in a community meeting, or to the independent electoral agency, in respect of an election conducted by the independent electoral agency, for accreditation as a candidate agent or an observer to observe an election in terms of these Regulations, by completing a form substantially similar to Appendix 5.
- (2) Every accredited candidate agent and observer is bound by the code of conduct for accredited Observers as set out in Annexure F.

Part III – Prohibited conduct

[Please note: numbering as in original]

37 Code of conduct

Every candidate participating in the election is bound by and must comply with these Regulations, the Act as well as the code of conduct provided for in Annexure D to these regulations.

38 Unacceptable conduct

- (1) No person may conduct himself or herself in a manner that may—
 - (a) unduly influence a person to vote or not to vote;
 - (b) compel or unlawfully persuade a person to vote or not to vote for a particular candidate;
 - (c) interfere with the independence of the independent electoral agency;
 - (d) unlawfully prevent voters from access to voting stations;
 - (e) make intentional false statements or publish false information which may disrupt or prevent an election taking place;
 - (f) unlawfully create hostility or fear in order to influence the conduct or outcome of an election;
 - (g) unlawfully remove, destroy or damage any election material;
 - (h) unlawfully print, transport or remove ballot papers or manufacture any election material;

- (i) unlawfully remove or damage any billboard or placard;
- (j) unlawfully carry or display any dangerous weapon within the boundaries of the voting station;
- (k) within the boundaries of the voting station engage in any political activity other than casting a vote.

(2) Any person who contravenes or fails to comply with the provision of these Regulation is guilty of a misconduct and on conviction liable to an appropriate sanction determined by a competent tribunal and or Chairperson.

39 Election campaigns

Election campaigns must be conducted in compliance with the provisions of Annexure D to these Regulations.

40 Declaration of secrecy

The declaration of secrecy must be signed before appointment as an officer, using the form in Appendix 6.

41 Repeal of the regulations

The entire [Regulations of 2007](#) for the election of the 40% of members of the traditional council is hereby repealed by this [Regulations of 2024](#)

42 Short-title and commencement

These Regulations are called the regulations for the Constitution and Reconstitution of traditional councils in the Mpumalanga Province, 2024 and shall come into operation in the date of publication.

Annexure A

Number of members of traditional councils as per the ministerial formula in line with section 16(2)(a) of the traditional and Khoi-san leadership Act, 2019

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

NB. The determination of the numbers of a traditional council is based on the Minister's Formula for determination of the number of members of a traditional council published in the government gazette no. 50161 on 22 February 2024

The table above is a breakdown of the composition of the traditional councils as per the Ministerial Formula.

Annexure B

Code of conduct for appointed officers

All appointed officers must:—

1. Come to work on time and knock off after counting is completed;
2. Abide by the instructions given by the Presiding Officer
3. Carry out all your assigned duties competently and efficiently;
4. Be and act impartial and do not favour or side with any candidate;
5. Serve voters with respect, dignity and courtesy;
6. Be accurate and thorough in their work;
7. Keep their work above question;
8. Preserve the secrecy of the vote;
9. Treat their colleagues, observers and security personnel with respect
10. Dress respectfully and be presentable;
11. Conduct themselves in a professional manner;
12. Make sure that the voting station is presentable and tidy;
13. Always act in accordance with the law; and
14. Approach the presiding officer or the deputy for clarity on issues where and when necessary.

During the Election Day, a voting officer is not allowed to:

1. Canvass or campaign for any candidate;
2. Use equipment or assets of a candidate;
3. Behave negligently;
4. Behave fraudulently;
5. Wear clothing with any candidate names, signs or logos;
6. Abuse equipment for personal interests during the hours of voting and counting;
7. Use drugs and alcohol-related substances; and
8. Disclose any information regarding how a voter voted.

Annexure C

Voting materials

The following minimum voting material is needed in each voting station:—

- i. ballot papers;
- ii. ballot boxes;
- iii. voting compartments;

- iv. the certified segment of the voters' roll for the voting district;
- v. indelible ink;
- vi. seals;
- vii. official stamp;
- viii. all prescribed forms;
- ix. pencils and pens;
- x. rulers;
- xi. boundary tape;
- xii. banners;
- xiii. industrial tape;
- xiv. envelopes;
- xv. paper clips;
- xvi. stickers and name tags;
- xvii. puncher.

Annexure D

Electoral code of conduct for candidates participating in traditional council elections

Part 1 – Prohibited conduct

Undue influence

- (1) No person may—
 - (a) compel or unlawfully persuade any person—
 - (i) to register or not to register as a voter;
 - (ii) to vote or not to vote;
 - (iii) to vote or not to vote for any nominated candidate; or
 - (iv) to support or not to support any nominated candidate;
 - (b) interfere with the independence or impartiality of the independent electoral agency, any member, employee or officer of the independent electoral agency;
 - (c) prejudice any person because of any past, present or anticipated performance of a function in terms of these Regulations;
 - (d) advantage, or promise to advantage, a person in exchange for that person not performing a function in terms of these Regulations;
 - (e) prevent any of the following persons from gaining reasonable access to voters, whether in a public or private place—
 - (i) any representative of a candidate or a candidate;
 - (ii) any candidate in an election;

- (iii) any member, employee or officer of the independent electoral agency;
- (iv) any person appointed by an accredited observer; or
- (v) any person accredited to provide voter education;

(2) subject to these Regulations, no person may prevent anyone from exercising a right conferred by these Regulations.

(3) No person, knowing that another person is not entitled to be registered as a voter, may—

- (a) persuade that other person that that other person is entitled to be registered as a voter; or
- (b) represent to anyone else that that other person is entitled to be registered as a voter.

(4) No person, knowing that another person is not entitled to vote, may—

- (a) assist, compel or persuade that other person to vote; or
- (b) represent to anyone else that that other person is entitled to vote.

[Please note: no numbering as in original.]

2. Impersonation

(1) No person—

- (a) may apply to be registered as a voter in the name of any other person, whether living, dead or fictitious;
- (b) may apply for a ballot paper at a voting station in the name of another person, whether living, dead or fictitious;
- (c) who is not entitled to vote in an election or at a voting station, may vote in that election or at that voting station;
- (d) may cast more votes than that person is entitled to; or
- (e) may impersonate—
 - (i) a representative of a candidate or candidates;
 - (ii) a candidate in an election;
 - (iii) a member, employee or officer of the independent electoral agency;
 - (iv) a person appointed by an accredited observer; or
 - (v) a person accredited to provide voter education..

3. Intentional false statements

(1) No person, when required in terms of these Regulations to make a statement, may make the statement

- (a) knowing that it is false; or
- (b) without believing on reasonable grounds that the statement is true.

(2) No person may publish any false information with the intention of—

- (a) disrupting or preventing an election;
- (b) creating hostility or fear in order to influence the conduct or outcome of an election; or
- (c) influencing the conduct or outcome of an election

4. Infringement of secrecy

- (1) No person may interfere with a voter's right to secrecy while casting a vote.
- (2) Except as permitted in terms of these Regulations, no person may—
 - (a) disclose any information about voting or the counting of votes; or
 - (b) open any ballot box or container sealed in terms of these Regulations, or break its seal.

5. Prohibitions concerning voting and election materials

- (1) Except as permitted in terms of these Regulations, no person may—
 - (a) print, manufacture or supply any voting or election material;
 - (b) remove or conceal any voting or election material;
 - (c) damage or destroy any voting or election material; or
 - (d) use the voters' roll or any voting or election material for a purpose other than an election purpose.
- (2) The independent electoral agency may authorise—
 - (a) the printing, manufacture or supply of any voting or election material;
 - (b) the use of the voters' roll or any voting or election material for a purpose other than an election purpose; and
 - (c) the removal or destruction of any voting or election material.

6. Prohibitions concerning placards and billboards during election

From the date on which an election is called to the date the result of the election is determined and declared in terms of regulation 4, no person may deface or unlawfully remove any billboard, placard or poster published by a candidate.

7. Obstruction of, or Non-Compliance With, Directions of independent electoral agency and assigned officials

- (1) No person may refuse or fail to give effect to a lawful direction, instruction or order of the independent electoral agency, or a member, employee or officer of the independent electoral agency.
- (2) A person may not obstruct or hinder the independent electoral agency, or a person mentioned in subitem (1), or a person appointed by an accredited observer, in the exercise of their powers or the performance of their duties.

8. Contravention of code

No candidate bound by the code may contravene or fail to comply with provisions of this code

Part 2 – Enforcement

9. Institution of and intervention in civil proceedings by independent electoral agency

- (1) subject to these Regulations and any other law, the MEC either personally or through the independent electoral agency may institute civil proceedings before a court to enforce a provision or provisions of these Regulations or the code of conduct.
- (2) The Premier either personally or through the independent electoral agency may intervene in any civil proceedings if the Premier or independent electoral agency has a legal interest in the outcome of those proceedings.

10. Jurisdiction and powers of election tribunal

- (1) The election tribunal has jurisdiction in respect of all electoral disputes and complaints about infringements of the code of conduct.
- (2) If the election tribunal finds that a person has contravened a provision of Part 1 of this Chapter it may in the interest of a free and fair election impose any appropriate penalty or sanction on that person, including—
 - (a) a formal warning;
 - (b) a fine not exceeding R10 000-00;
 - (c) an order prohibiting that person from—
 - (i) using any public media;
 - (ii) holding any public meeting, demonstration, march or other event;
 - (iii) entering any voting district for the purpose of canvassing voters or for any other election purpose;
 - (iv) erecting or publishing billboards, placards or posters at or in any place;
 - (v) publishing or distributing any campaign literature;
 - (vi) electoral advertising;
 - (d) an order imposing limits on the right of that person or to perform any of the activities mentioned in paragraph (d);
 - (e) an order excluding that person or any agents of that person from entering a voting station;
 - (f) an order reducing the number of votes cast in favour of that person; or
 - (g) an order disqualifying the candidature of that person;
- (3) Any penalty or sanction provided for in this section will be in addition to any penalty provided for in Part 3 of this Chapter.
- (4) Any penalty paid in terms of this regulation is payable to the magistrate's court in whose area of jurisdiction the matter arose.

Part 3 – Additional powers and duties of independent electoral agency

11. Electoral code of conduct and other codes

- (1) The electoral code of conduct must be subscribed to -
 - (a) by every registered candidate before that candidate is allowed to contest an election; and
 - (b) by every candidate before that candidate may be placed on a list of candidates.
- (2) In order to promote free, fair and orderly elections, the independent electoral agency may compile and issue any other code not catered for in these Regulations.
- (3) The independent electoral agency may change or replace code issued in terms of subitem (2).
- (4) A code issued in terms of subitem (2), or a change to or replacement of such a code, must be published in the *Government Gazette*.

Annexure E

Code of conduct for accredited observers

1. Every accredited observer and person appointed by the observer must—
 - 1.1 Observe the election impartially and independently of any candidate contesting the election.
 - 1.2 Remain non-partisan and neutral.
 - 1.3 Be competent and professional in observing the election.
 - 1.4 Provide the independent electoral agency with a comprehensive review of the elections taking into account all relevant circumstances including—
 - (a) the degree of impartiality shown by the independent electoral agency;
 - (b) the degree of freedom of candidates to organise, move, assemble and express their views publicly;
 - (c) the opportunity for candidates to have their agents observe all aspects of the electoral process;
 - (d) the fairness of access for candidates to national media and other resources of the state;
 - (e) the proper conduct of polling and counting of votes; and
 - (f) any other issue that concerns the essential freedom and fairness of the election.
 - 1.5 Comply with all instructions given and every obligation imposed by—
 - (a) the independent electoral agency;
 - (b) any electoral officer; or
 - (c) any employee or officer of the independent electoral agency; or
 - (d) a member of the security services acting on the instructions of an officer
2. The accredited observer and any person appointed by that observer should—
 - 2.1 Avoid doing anything that would indicate or be seen as indicating partisan support for a candidate.
 - 2.2 Act in a strictly neutral and unbiased manner.
 - 2.3 Disclose to the independent electoral agency any relationship that could lead to conflict of interest regarding the performance of their duties as observers or with the process of observation or assessment of the election.
 - 2.4 Not accept any gifts or favour from a candidate, organisation or person involved in the election process.
 - 2.5 Not participate in any function or activity that could lead to a perception of sympathy for a particular candidate.
 - 2.6 Not express a view or opinion on any matter, which is the subject of electoral campaigning.
 - 2.7 Not influence or attempt to influence the choice of a voter regarding any candidate in an election.
 - 2.8 Not wear, carry, or display any political party's symbols or colours.

Appendix 1

Nomination of candidates for traditional council elections

[Please note: The forms have not been reproduced.]

Appendix 2

Presiding officer's ballot paper statement in the traditional council election

[Please note: The form has not been reproduced.]

Appendix 3

Results form to be completed by counting officer in respect of votes cast for candidates in the traditional council elections

[Please note: The form has not been reproduced.]

Appendix 4

Objection concerning voting in the traditional council elections

[Please note: The form has not been reproduced.]

Appendix 5

Application for accreditation as observer in traditional council elections

[Please note: The forms have not been reproduced.]