PREMIER'S NOTICE

No. 7 **31 July 2014**

MPUMALANGA INGOMA ACT, 2011
(ACT NO. 3 OF 2011)

It is hereby notified that I, **David Dabede Mabuza**, in my capacity as Premier of the Mpumalanga Province, have, in terms of section 121 of the Constitution of the Republic of South Africa, 1996, assented to the Mpumalanga Ingoma Act, 2011. The Mpumalanga Ingoma Act, 2011 (Act No. 3 of 2011), is hereby published for general information.

D.D. MABUZA
PREMIER: MPUMALANGA PROVINCE
DATE: 26 June 2014

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MPUMALANGA INGOMA ACT, 2011

(As passed by the Mpumalanga Provincial Legislature on 25 November 2011)

(MEC FOR CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

(Act No 3 of 2011)

MPUMALANGA INGOMA ACT, 2011

To regulate the holding of Ingoma within the Province; to provide for the prohibition of forced attendance of an Ingoma; to provide for the implementation and monitoring of health and hygienic standards at an Ingoma and to provide for matters incidental thereto.

BE IT ENACTED by the Provincial Legislature of the Province of Mpumalanga, as follows:

Definitions

1. In this Act, unless the context indicates otherwise –

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"the Leadership and Governance Act" means the Mpumalanga Traditional Leadership and Governance Act, 2005(Act No.3of 2005);

"Ingoma" means a gathering, meeting or assembly of persons where one or more umsana are in attendance in order to participate in traditional practices in accordance with applicable customary law, customs and traditions;

"Ingoma holder" means a person who has permission to hold an Ingoma and has over all control in the running of an Ingoma;

"inkosi" means a person born from a defined mother in accordance with the tradition, customs and norms of the traditional community concerned and who is recognised in terms of section 19 of the Leadership and Governance Act, and **"inkosi"**, **"kgoshi"** and **"hosi"**;

"king" or" queen" means a traditional leader –

(a) under whose authority, or within whose area of jurisdiction, senior traditional leaders exercise authority in accordance with customary law; and

(b) who is recognized as such in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

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

"medical practitioner" means a medical practitioner registered as such under the Health Professions Act, 1974 (Act No. 56 of 1974);

"Premier" means the Premier of the Province referred to in section 125 of the Constitution;

"prescribe" means prescribed by regulation;

"Province" means the Province of Mpumalanga as contemplated in section 103(1)(e) of the Constitution;

"Provincial House" means the Provincial House of Traditional Leaders established in terms of the Mpumalanga Provincial House and Local Houses of Traditional Leaders Act, 2005 (Act No. 6 of 2005);

"register of iinyanga" means the register referred to in section 6(1);

"senior traditional leader" means a traditional leader of a specific traditional community who exercises authority over a number of headmen or headwomen in accordance with customary law, or within whose area of jurisdiction a number of headmen or headwomen exercise authority;

"this Act" includes the regulations made in terms hereof;

"traditional community" means a traditional community recognised as such as contemplated in section 3 of the Leadership and Governance Act;

"traditional council" means a traditional council as contemplated in section 5 of the Leadership and Governance Act;

"traditional practice" includes a practice according to the customs, traditions, religion or any other rules of a similar nature observed by a traditional community situated within the Province;

"inyanga" means a person who has been culturally trained with experience in performing ukuyama and who is registered in the prescribed manner in the register of iinyanga;

"ukweyanyiswa" means a ritual that a young man undergoes during an Ingoma as a rite of passage to manhood, and **"kuyimbisiwa"** and **"hobolotswa"** has a corresponding meaning;

"umkhethwa" means a person attending an Ingoma in order to participate in traditional practices in accordance with applicable customary law, customs and traditions who has undergone ukuyama, and **"modika"** and **"nkwerha"**; and

"umsegwabo" means a person attending an Ingoma in order to participate in traditional practices in accordance with applicable customary law, customs and traditions but who has not undergone ukuyama, and **"moshimanyana"** and **"mufana"** has a corresponding meaning.

2. Object of Act

The object of this Act is to regulate the traditional practice of holding Ingoma in the Province and to give effect to the right to traditional practices enshrined in section 31 of the Constitution.

3. Holding of Ingoma

(1) No person may hold an Ingoma without the approval of the king or queen or, in the absence of the king or queen, inkosi concerned.

(2) (a) Any person who wishes to hold an Ingoma must, at least 60 days before an Ingoma is held, apply to the king, queen, or inkosi concerned for permission to hold an Ingoma.

(b) The application contemplated in paragraph (a) must be in the form set out in Schedule 1 and must be accompanied by –

(i) a written approval of an owner or legal occupier of private land if an Ingoma will be held on privately owned land; and

(ii) a written approval from the Municipality or the Provincial Government if an Ingoma will be held on land owned by such Municipality or the Provincial Government.

(3) (a) Any person whose request for the approval contemplated in subsection (2)(b)(i) and (ii) is refused, may, in the prescribed manner, appeal against such refusal, to the Provincial House.

(b) The Provincial House must consider an appeal lodged in terms of subsection (3)(a) and, in writing, make its decision known to the person who lodged the appeal within10 days of the lodging of such an appeal.

(4) (a) A king, queen or inkosi concerned or the Provincial House must, not later than 14 days after receipt of such application, in writing, make his or her or its decision known to the applicant, whilst taking due cognisance of the annual school calendar: Provided that if the application is refused, the king, queen, inkosi concerned or the Provincial House, as the case may be, must furnish the applicant with reasons for such refusal.

(b) A king, queen or inkosi that approves the holding of an Ingoma must submit the approval to the Provincial House and the MEC.

(c) It is the responsibility of the king, queen or inkosi concerned, and the Ingoma holder to make known, through imbizos and community meetings, the age restriction, location and the duration of an Ingoma in order to restrict any unauthorised entry to an Ingoma.

(5) Any person who holds an Ingoma, must at all reasonable times for the duration of the Ingoma, have the written approval issued in terms of subsection (1) and keep an updated register of all the abakhethwa at the Ingoma available for inspection.

4. Prohibition of forced attendance of Ingoma

No person may be forced, coerced or pressurized into attending an Ingoma or be subjected to any activity taking place at such Ingoma, against such person's will.

5. Permission to attend Ingoma

(1) A minor may not attend an Ingoma without his parents' or legal guardian's consent: Provided that a person under the age of 16 years of age may not attend an Ingoma as umkhethwa.

(2) The consent contemplated in subsection (1) must be –

(a) in the format set out in Schedule 2;

(b) accompanied by a medical certificate issued by a medical practitioner declaring that such person is fit to participate in the traditional practice concerned; and

(c) submitted to the person who holds an Ingoma.

(3) Any person who holds an Ingoma, must at all reasonable times for the duration of an Ingoma have the consent forms completed in terms of subsection (1), pertaining to the abakhethwa attending an Ingoma, available for inspection.

6. Persons who may perform ukuyamain terms of this Act

(1) A register of iinyanga must be established and maintained by the Provincial House in the prescribed manner.

(2) Only a medical practitioner who has previously attended an Ingoma or a person registered in the prescribed manner as an inyanga in the register of iinyanga may perform ukuyama on umkhethwa attending an Ingoma.

(3) In performing ukuyama, the person referred to in subsection (2), must observe due care and diligence and maintain suitable health and hygienic standards.

(4) The person referred to in subsection (2) that performs ukuyama, is wholly responsible for the medical treatment and care of the umkhethwa concerned during and subsequent to such ukuyama until the umkhethwa concerned has recovered.

7. Inspection and investigation

(1) The MEC, in consultation with the Member of the Executive Council responsible for health matters and the king, queen and inkosi, may designate a male in the employ of the Public Service and who has previously attended an Ingoma pertaining to the culture concerned, to at any reasonable time, conduct an inspection at any Ingoma being held within the Province in order to ensure that such Ingoma is being conducted in a proper manner and in full compliance with this Act.

(2) If the MEC has reason to believe that an irregularity has occurred at an Ingoma, the MEC may, after consultation with the king, queen or inkosi concerned, cause the matter to be investigated by a person designated by the MEC in consultation with the Member of the Executive Council responsible for health matters.

(3) If the MEC has reason to believe that conditions prevailing in the area in which an Ingoma is being held are, or may be, detrimental to the health or well-being of abakhethwa attending such Ingoma, the MEC may cause such matter to be investigated by a medical practitioner designated by the MEC in consultation with the Member of the Executive Council responsible for health matters; Provided that the medical practitioner so designated has previously attended an Ingoma pertaining to the culture concerned.

(4) On receipt of a report from the person designated to investigate an irregularity in terms of either subsection (2) or subsection (3), the MEC may take such reasonable steps necessary, after consultation with the king, queen or inkosi concerned, in order to address such irregularity or the conditions detrimental to the health, safety or well-being of the abakhethwa.

(5) The Ingoma holder must duly record the number of abakhethwa at the end of the Ingoma in the register as referred to in section 3(5) of this Act, and submit to the king, queen or inkosi a report on the number of injuries and deaths that occurred during the Ingoma.

(6) The king, queen or inkosi must, after every Ingoma held in his or her area of jurisdiction, report to the Provincial House the number of injuries or deaths that occurred during the Ingoma and any corrective measures put in place to avoid recurrence.

8. Duration of Ingoma

The king, queen or inkosi must determine the duration of an Ingoma, taking into account the annual school calendar and the customs of the traditional community concerned.

9. Fees

(1) Any person who attends an Ingoma must, prior to or immediately after the commencement of the Ingoma, pay the prescribed fees for food and other related support or provide payment in kind or other related support as agreed to with the Ingoma holder.

(2) The fees, payment in kind or other support contemplated in subsection (1), must be paid or provided to the Ingoma holder.

10.Offence

(1) Holding an Ingoma without the necessary approval is a criminal offence.

(2) Allowing a minor to attend an Ingoma without the permission of his parents or guardian is a criminal offence.

(3) Any person who contravenes any provision of this Act, makes himself or herself guilty of an offence, and is liable on conviction to a fine or to imprisonment for a period not exceeding 5 years or to both such fine and imprisonment.

11. Regulations

The MEC may, after consultation with the Provincial House, make regulations regarding –

(a) the form and manner of lodging an appeal against the non-approval of the holding of an Ingoma;

(b) the categories and upper limits of fees payable in respect of the attendance of an Ingoma;

(c) the requirements for the registration of iinyanga and the keeping of the register thereof; and

(d) any other matter that is necessary or expedient to be regulated in order to achieve the objects of this Act.

12.Repeal of laws

The Kwandebele Ingoma Act, 1984 (Act No.4 of 1984) is repealed in whole and the Northern Province Circumcision Schools Act, 1996 (Act No.6 of 1996) is repealed in as far as it is applicable in the Province.

13.Short title and commencement

(1) This Act is called the Mpumalanga Ingoma Act, 2011, and comes into operation on a date to be determined by the Premier in the *Provincial Gazette*.

(2) Different dates may be determined by the Premier in terms of subsection (1) in respect of different provisions of the Act.

SCHEDULE 1

An application for approval for the holding of an Ingoma as contemplated in section 3(1), must contain the following information and separate application forms must be completed and submitted in respect of each Ingoma being applied for:

APPLICATION FOR APPROVAL FOR THE HOLDING OF AN INGOMA

1. UNDERTAKING

I, the undersigned, hereby apply for approval for the holding of an Ingoma in terms of the Mpumalanga Ingoma Act, 2011, based on the information supplied below, which information is, to the best of my knowledge, accurate and correct.

I further undertake to hold the Ingoma applied for herewith in accordance with the information provided in this application, once approval has been obtained.

2. PERSONAL DETAILS OF APPLICANT

(a) Full names:_____;
(b) Identity number : _____;
(c) Physical address : _____;
(d) Postal address : _____;
(e) Telephone number : _____;

3. LOCATION OF INGOMA

(a) Name of Municipality within which area of jurisdiction an Ingoma will be held:_____;
(b) Name of Magisterial District within which area of jurisdiction an Ingoma will be held: _____;
(c) Name of Traditional Community concerned_____;
(d) Name of private land owner concerned on whose land an Ingoma will be held (if applicable):____ _____;
(e) Name of Municipality or Government Department on whose land an Ingoma will be held (if applicable):_____;
(f) Physical description of specific area where the Ingoma concerned will be held:_____;
(g) Period during which Ingoma will be held:_____.

4. NUMBER OF INITIATES

It is hereby confirmed that not more than _____ initiates will attend the Ingoma.

5. PERSONAL DETAILS AND UNDERTAKING BY PERSON TO PERFORM UKUYAMA

(a) Full names :_____;
(b) Identity number : _____;
(c) Registration number:_____;
(d) Physical address : _____;

(e) Postal address : _____;

(f) Telephone number: _____;

I _____ hereby confirm that I am the person contemplated in section 6 of the Act, and such fact is confirmed by the following document/s, qualifications and the name of the institution obtained from, which are attached hereto:

_____

_____

_____

I further undertake, in performing ukuyama at an Ingoma, to exercise and observe due care and diligence and to maintain appropriate health and hygienic standards, as well as to subsequently treat the abakhethwa as contemplated in section 6 of this Act.

_____

Signature of person to perform ukuyama

Designation: _____

Date: _____

6. APPROVAL OF PRIVATE LAND OWNER / LEGAL OCCUPIER (IF APPLICABLE)

Approval granted for the holding of an Ingoma as detailed above, on my property / the land occupied by myself.

_____

Signature of private land owner / legal occupier (delete which is not applicable)

Date:_____

7. APPROVAL OF MUNICIPALITYOR PROVINCIAL GOVERNMENT

Approval granted for the holding of an Ingoma as detailed above, on the land of the _____Municipality, subject to the following conditions (if any):_____

_____

_____

Signature of Municipal Office-Bearer

Designation: _____

Date: _____

OR

Approval granted for the holding of an Ingoma as detailed above, on the land of the Department of_____, subject to the following conditions (if any)_____

_____

_____

_____

_____
Signature of Head of Department

Date: _____

8.ADDITIONAL INFORMATION (IF APPLICABLE)

It is hereby confirmed that I have previously applied for approval for the holding of Ingoma in terms of the Mpumalanga Ingoma Act, 2011, which application was successful / unsuccessful / approval still awaited (please indicate in each instance):

_____
_____
_____

_____
Signature of applicant

Date: _____

9. APPROVED / NOT APPROVED

COMMENTS ORREASONS IF APPLICATION IS NOT APPROVED:

_____
_____
_____

10. DURATION OF INGOMA

The Ingoma will be held from _____ until _____.

_____
King or Queen or Inkosi

Designation: _____

Date: _____

[11. APPROVED / NOT APPROVED

COMMENTS ORREASONS IF APPLICATION IS NOT APPROVED:

_____
_____

_____
Signature of the Responsible Member
Date: _____]

SCHEDULE 2

CONSENT BY PERSON ATTENDING INGOMA

I, _____, hereby consent, as contemplated in section 5(1) of the Mpumalanga Ingoma Act, 2011, of my own free will, to attend the Ingoma to be held in terms of the said Act, at _____ from _____ until _____.

My personal details are as follows:

Identity Number _____

Residential address _____

_____

_____

Telephone number: _____

_____

Signature of umsegwabo

Date: _____

TO BE COMPLETED IF APPLICABLE

I, _____ hereby consent, of my own free will, that the ritual of ukuyama may be performed on me at the above-mentioned Ingoma.

_____

Signature of umsegwabo

Date: _____

OR

CONSENT OF PARENT OR GUARDIAN OF PERSON TO ATTEND INGOMA IF SUCH PERSON IS STILL A MINOR

I, _____, as parent/legal guardian of _____, hereby consent, as contemplated in section 5(1) of the Mpumalanga Ingoma Act, 2011, that _____ may attend the Ingoma to be held in terms of the said Act, at _____ from _____ until

My personal details are as follows:

Identity Number _____

Residential address _____

_____

Telephone number: _____

_____

Signature

Parent / Guardian (delete which is not applicable)

Date: _____

TO BE COMPLETED IF APPLICABLE

I, _____as parent/legal guardian of _____ hereby consent that all the rituals may be performed on_____ at the above-mentioned Ingoma.

_____

Signature

Parent / Guardian (delete which is not applicable)

Date: _____

MEMORANDUM ON THE OBJECTS OF THE MPUMALANGA INGOMA ACT, 2010

1. BACKGROUND

The Constitution provides for the recognition of a system of customary law and the observance of customary practices including the institution of initiation schools. This Act seeks to regulate the traditional practice of holding an Ingoma and related matters within the Province.

2. PURPOSE OF ACT:

2.1 The Act seeks to regulate the traditional practice of the holding of Ingoma in accordance with applicable customary law and practices within the Province.

2.2 The Act limits the performing of circumcision to medical practitioners or iinyanga who are registered as such in the register of iinyanga. This in turn will eliminate the possibility of "fly-by night" surgeons who more often than not cause irreparable harm to the umkhethwa.

2.3 The following is a clause by clause analysis of the Act:

2.3.1 Clause 1 defines the terminology used in the Act.

2.3.2 Clause 2 provides for the object of the Act, which is the regulation of the practice of the holding of an Ingoma.

2.3.3 Clause 3 regulates the holding of an Ingoma. The clause provides for the approvals which a person who wants to hold an Ingoma must obtain. Before Ingoma may be held, approval must be sought from the king, queen, Inkosi or senior traditional leader of the traditional community of whom the umkhethwa are members, or from the MEC. Provision is also made for approval to be obtained from the owner of private land where the Ingoma will be held.

2.3.4 Clause 4 prohibits forced attendance of Ingoma as well as subjection to any of the activities that take place there.

2.3.5 Clause 5 provides for the necessary permission for umkhethwa to attend an Ingoma. A person who is below the age of 16 years may not attend an Ingoma, even with the consent of his parents.

2.3.6 Clause 6 provides for the persons who may perform ukuyama. Only a medical practitioner and a registered inyanga may perform ukuyama. The person who performs the ukuyama has the overall responsibility for medical treatment of the umkhethwa who have undergone ukuyama.

2.3.7 Clause 7 provides for the inspection and investigation of an Ingoma which may be called by the MEC responsible for traditional matters in consultation with the MEC for

health and the king or queen whenever there are reasonable grounds to believe that there is a risk of health hazards prevailing in the Ingoma.

2.3.8 Clause 8 provides for the duration of an Ingoma, which must be determined by the king or queen taking into account the school calendar.

2.3.9 Clause 9 provides for fees for the subsistence of an Ingoma. The fees payable may be in money or in kind.

2.3.10 Clause 10 provides for offences and penalties.

2.3.11 Clause 11 is the regulations section. The MEC responsible for traditional matters in the Province has the power to make regulations regarding, *inter alia,* any matter which is necessary or expedient to be regulated in order to achieve the objects of the Act. Regulations will be developed, once the Act has been passed and put into operation.

2.3.12 Clause 12 repeals the Kwandebele Ingoma Act, 1984 (Act No.4 of 1984) in whole and repeals the Northern Province Circumcision Schools Act, 1996 (Act No.6 of 1996) in as far as it is applicable in the Province.

2.3.13 Clause 13 provides for the short title and commencement of the Act.

2.3.14 Schedule 1 is the application for the approval for the holding of an Ingoma.

2.3.15 Schedule 2 provides for the consent by a person attending an Ingoma.

3. ORGANISATIONAL AND HUMAN RESOURCE IMPLICATIONS

The Department will assign the Chief Directorate: Traditional Institutional Management to administer the register of iinyanga.

4. FINANCIAL IMPLICATIONS FOR THE PROVINCE

There are no financial implications associated with the Act.

5. CONSTITUTIONAL IMPLICATIONS

There are no constitutional implications associated with the Act.

6. OTHER DEPARTMENTS OR BODIES CONSULTED

The following Departments and bodies were consulted:

State Law Advisers;
Provincial House of Traditional Leaders; and
Traditional leaders in Bushbuckridge, Matibidi and former Kwandebele.

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