

Mpumalanga, South Africa

Mpumalanga Traditional Leadership and Governance Act, 2005

## Regulations for the Election of the 40% of Members of Traditional Councils, 2007

Provincial Notice 3 of 2007

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Regulations for the Election of the 40% of Members of Traditional Councils, 2007  
 Contents

1. Definitions ..... 1

2. The scope of application and interpretation of the Regulations ..... 2

3. Interpretation and application ..... 2

4. Declaration by MEC ..... 2

5. Appointment of Independent Election Agency ..... 3

6. Members to be elected by a traditional community ..... 3

7. Proclamation of and preparation for the election ..... 3

8. Qualification to vote ..... 4

9. Qualification for nomination and membership ..... 4

10. Nominations ..... 5

11. Establishment of voting stations ..... 5

12. Election staff ..... 6

13. Registration of voters and compilation of voters' roll ..... 7

14. Election material ..... 7

15. General management of the election ..... 7

16. Hours of voting ..... 8

17. Boundaries of voting stations ..... 8

18. Mobile voting stations ..... 8

19. Initial procedures ..... 8

20. Voting procedure ..... 8

21. Assistance to certain voters ..... 9

22. Issue of new ballot papers ..... 9

23. Marking of hand ..... 10

24. Sealing of ballot boxes ..... 10

25. Completion of ballot paper statement and sealing of voting material ..... 10

26. Counting Procedures ..... 10

27. Procedure concerning results and voting material ..... 11

28. Election ties ..... 12

29. Election disputes and appeals ..... 12

30. The establishment of an Election Tribunal ..... 12

31. Swearing in of elected councillors ..... 13

32. Filling of vacancies ..... 13

33. Code of Conduct for candidates ..... 14

34. Election observers ..... 14

35. Election campaigns .....	14
36. Declaration of secrecy .....	14
37. Offences .....	14
38. Penalties .....	16
39. Short title .....	17
Schedule A .....	18
Schedule B .....	19
Schedule C .....	20
Schedule D .....	20
Schedule E .....	21
Schedule F .....	21
Schedule G .....	22
Appendix 1 .....	23
Appendix 2 .....	23
Appendix 3 .....	24
Appendix 4 .....	25
Appendix 5 .....	26
Appendix 6 .....	27
Appendix 7 .....	29
Appendix 8 .....	29

# Mpumalanga South Africa

## Mpumalanga Traditional Leadership and Governance Act, 2005

### Regulations for the Election of the 40% of Members of Traditional Councils, 2007 Provincial Notice 3 of 2007

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**Commenced on 19 December 2007**

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Under section 28 of the Mpumalanga Traditional Leadership and Governance Act, 2005 ([Act No. 3 of 2005](#)), I, K. C. MASHEGO-DLAMINI, Member of the Executive Council responsible for Local Government and Housing in Mpumalanga, after consultation with the Premier, make these Regulations in the schedule, prescribing the election procedure required by section 28 of the Act, which Regulations are hereby published.

K.C. Mashego-Dlamini

MEC for Local Government and Housing

#### 1. Definitions

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

“**by-election**” means a by-election contemplated in regulation 32;

“**candidate**” means a person who has been nominated in terms of regulation 10;

“**day**” for the purposes of these regulations a day means a working day, excluding weekends and public holidays;

“**Department**” means the Provincial Department of Local Government and Housing in Mpumalanga;

“**deputy presiding officer**” means an officer of the Department designated as such by the MEC in terms of regulation 7(6), which officer will be responsible for assisting the presiding officer in exercising and performing his or her powers and functions, in terms of these regulations;

“**district**” means the area of jurisdiction of a district municipality;

“**election**” means an election conducted in terms of these regulations;

“**election timetable**” means the election timetable to be compiled by the Independent Election Agency in terms of regulation 7(2);

“**election tribunal**” means the Tribunal to be established in terms of regulation 30;

“**election observer**” means a person accredited to observe the election in terms of regulation 34;

“**Electoral Act**” means the Electoral Act, 1998 ([Act No. 73 of 1998](#));

“**houses**” mean the Local Houses and the Provincial House of Traditional Leaders;

“**Independent Election Agency**” means the agency to be appointed in terms of regulation 5;

“**MEC**” means the member of the Executive Council responsible for traditional leadership matters in the Province;

“**nomination**” means a nomination as contemplated in regulation 10;

“**presiding officer**” means an officer of the Department designated as such by the MEC in terms of regulation 7(6), which officer will be responsible for conducting and overseeing an election in respect of which he or she has been so designated, in terms of these regulations;

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

“**traditional community meeting**” means a meeting as contemplated in regulations 9(2), 10(6), 27(8) and 28(5);

“**the Act**” means the Mpumalanga Traditional Leadership and Governance Act, 2005 ([Act No. 3 of 2005](#));

“**voter**” means a person who is eligible to vote in Traditional Council elections in terms of these regulations;

“**voters’ roll**” means those segments of the voters’ roll to be used in an election in terms of these regulations and certified by the MEC in terms of regulation 13;

“**voting district**” for purposes of these regulations means an area comprising of one or a part of a traditional ward or a combination of two or more traditional wards for which a voters’ roll is compiled in terms of regulation 13;

“**voting officer**” means an officer of the Department designated as such by the MEC in terms of regulation 7(6), which officer will be responsible for assisting the presiding officer in respect of the conducting of an election, in terms of these regulations;

“**voting station**” means a voting station for voting purposes established in terms of regulation 11;

“**traditional ward**” means a village, administrative area, moraka, isigodi, motse, location or farm designated as a traditional ward by the MEC for purposes of an election in terms of these regulations;

“**Senior Traditional Leader**” means a traditional leader of 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 exercises authority.

## 2. The scope of application and interpretation of the Regulations

These regulations apply to the election of the 40% of members of Traditional Councils as contemplated in section 5(2)(b) of the Act.

## 3. Interpretation and application

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](#);
- (b) take into account the Framework Act and the Act; and
- (c) take into account the traditions and customs applicable to the traditional community, subject to the [Constitution](#) and the Law.

## 4. Declaration by MEC

Prior to an election, the MEC, after consultation with the Premier, must decide and direct, in writing the applicable time frames, including election dates.

## 5. Appointment of Independent Election Agency

- (1) After the determination of the election option and the declaration of the date or dates of the election, the Department may approach the Independent Electoral Commission for appointment as the Independent Election Agency, failing which the Department must appoint an Independent Election Agency through the official procurement process to conduct the election, including the procedure pertaining to the nomination of candidates for the election and the announcement of the election results.
- (2) In appointing an Independent Election Agency, the Department must take into account -
  - (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
  - (e) any other consideration that the Department may consider necessary in compiling the procurement documentation.

## 6. Members to be elected by a traditional community

- (1) The members of a Traditional Council to be elected in terms of the Act -
  - (a) must be elected in accordance with the criteria provided for in regulation 9(1);
  - (b) must comprise of at least one third women, subject to the provisions of section 5(4) of the Act;
  - (c) must constitute 40% of the total number of members of the Traditional Council.
- (2) The number of members of a Tradition Council is calculated in accordance with Schedule A.

## 7. Proclamation of and preparation for the election

- (1) The MEC must, after consultation with the Premier, proclaim, by Notice in the *Provincial Gazette*, the date or dates for the election of a Traditional Council, at least six months before the expiry of the term of office of the existing Traditional Council's members, allowing for -
  - (a) proper communication regarding the envisaged processes with the traditional community concerned;
  - (b) nominations, the election and the announcement of the results at least six weeks before the expiry of the term of office of the members of the outgoing Traditional Council;
  - (c) the submission of the names of the newly elected members to the MEC, at least 20 days before the expiry of the term of office of the members of the outgoing Traditional Council;
  - (d) the publication by the MEC in the *Provincial Gazette* of the names of the newly elected members of the Traditional Council concerned, at least 10 days before the expiry of the term of office of the members of the outgoing Traditional Council; and
  - (e) the swearing-in of the newly elected members of the Traditional Council which must take place on or before the last day of the term of office of the members of the outgoing Traditional Council.
- (2) After the proclamation of the election date, the election timetable must immediately be compiled by the Independent Election Agency in consultation with the MEC allowing at least 60 days for compliance therewith, and such election timetable must also be published in the *Provincial Gazette* by the MEC, for general notification.

- (3) The MEC may, in consultation with the Independent Election Agency, by notice in the *Provincial Gazette*, amend the election timetable only if it is in the interest of free and fair elections.
- (4) An election in terms of these regulations may only be postponed by the MEC, after consultation with the Premier, if the continuation of such election will grossly prejudice the administration of justice, order, peace or security, and the Independent Election Agency must provide the MEC of any information in this regard.
- (5) In the event of a postponement of an election for any reason mentioned in subregulation (4), the MEC must make his or her decision known in any appropriate way that will ensure sufficient publicity of the postponement and must set another date and such date must be proclaimed in the *Provincial Gazette*: Provided that the newly proclaimed date is within 30 days after initial election date or dates concerned.
- (6) The MEC must designate a presiding officer, a deputy presiding officer and as many voting officers as may be necessary to assist a traditional community with all aspects pertaining to the conducting of an election in terms of these regulations.

## 8. Qualification to vote

A person who wishes to participate in the election of any Traditional Council must -

- (a) reside within the jurisdictional area of the Traditional Council where the election will be conducted or, by birth, be a member of the traditional community concerned;
- (b) be eighteen years of age or older;
- (c) be in possession of a valid South African identity document;
- (d) be a member of the traditional community concerned;
- (e) be registered on the traditional community's voters' roll.

## 9. Qualification for nomination and membership

- (1) To qualify for membership of a Traditional Council or to be nominated as a candidate for a Traditional Council election, a person must duly comply with the requirements of section 7 of the Act and -
  - (a) reside within the jurisdictional area of the Traditional Council where the election will be conducted or, by birth, be a member of the traditional community concerned;
  - (b) be in possession of a valid South African identity document;
  - (c) be a member of the traditional community concerned;
  - (d) be registered on the voters' roll of the community concerned;
  - (e) not be a public servant;
  - (f) not already have been selected by a Senior Traditional Leader as part of the 60% selected councillors for the Traditional Council in respect of the election concerned as contemplated in subregulations (3) and (4).
- (2) The acceptance of the nomination must be completed and signed at a traditional community meeting.
- (3) The Senior Traditional Leader concerned must, prior to the nomination of candidates as contemplated in regulation 10, announce the names of the 60% membership of the Traditional Council selected by him or her in terms of section 5(2)(a) of the Act.



- (4) (a) The members of a Traditional Council to be selected in terms of section 5(2)(a) of the Act must -
  - (i) comprise of one representative selected by the Senior Traditional Leader from each tindvuna, subject to a maximum of 18 members, including the senior traditional leader of the traditional community concerned; and
  - (ii) comprise of at least one-third women, subject to the provisions of section 5(4) of the Act.
- (b) Where there are more than 17 tindvuna within the traditional community concerned, the Senior Traditional Leader must, in consultation with the MEC, group together two or more tindvuna from which one member will be selected or tindvuna may identify 17 members from among themselves to be elected as members of the Traditional Council concerned.

## 10. Nominations

- (1) The presiding officer must preside over the nomination process during a traditional community meeting called by himself or herself: Provided that where less than 40% of the members of the community who are duly registered on such community's voters' roll attend such meeting, the meeting may not proceed and a further traditional community meeting must be called by the presiding officer.
- (2) The number of the nominees must be equal to or above 40% of the total number of members of the Traditional Council, multiplied by two.
- (3) When conducting the nominations the presiding officer must ensure that at least 50% of the nominees are women to contribute towards achieving gender representivity as contemplated in section 5(4) of the Act: Provided that the MEC, after consultation with the Premier may, upon certification by the Department that there is an insufficient number of women available to participate in the Traditional Council, determine that the election may proceed with only the available number of the female candidates.
- (4) A nomination by a show of hands must be conducted in the following manner:
  - (a) The presiding officer must call for nominations;
  - (b) A candidate whose name has been proposed must be seconded by at least one person and supported by at least one third of the people in attendance, subsequent to which the nominator must duly complete a form substantially similar to Appendix 1;
  - (c) For a nomination to be accepted, a nominee must accept the nomination and declare that he or she satisfies the nomination criteria provided for in these regulations.
- (5) The nominated candidate must acknowledge and confirm acceptance of the nomination by completing the relevant form of acceptance of nomination, in a form substantially similar to Appendix 2.
- (6) The Independent Election Agency must record the proceedings of the traditional community meeting and submit such record to the Head of Department.

## 11. Establishment of voting stations

- (1) The Department must delimit the voting district boundaries with a view to determine the number of voting stations per traditional community as follows:
  - (a) Designate a traditional ward to be a voting district; or
  - (b) Sub-divide the jurisdictional area of the Traditional Council into voting districts; or
  - (c) A combination of the options referred to in paragraphs (a) and (b).

- (2) More than one voting station may be established where the size of the voting district so requires.
- (3) The Independent Election Agency must determine the number of voting stations to be established: Provided that voters must have reasonable access to a voting station.
- (4) Each voting station must generally comply with the provisions of section 64 of the Electoral Act and the regulations made in terms of that Act.

## 12. Election staff

- (1) Each voting station must be managed by efficient and competent election staff appointed by the Independent Election Agency from within the traditional community where the election will take place.
- (2) To qualify for appointment as an election staff member each person -
  - (a) must be registered at the voting station where he or she is to be stationed;
  - (b) may not be an agent for any candidate who has been nominated to contest the election;
  - (c) may not be a candidate in the election;
  - (d) may not be a member of any provincial legislature, Parliament or Municipal Council; and
  - (e) must meet the academic and other criteria set by the Independent Election Agency.
- (3) Each voting station must, subject to regulation 7(6), also be staffed by-
  - (a) the presiding officer;
  - (b) the deputy presiding officer; and
  - (c) a sufficient number of voting officers.
- (4) Voting officers are responsible for all activities within each voting station including but not limited to -
  - (a) verification of registration;
  - (b) stamping and issuing of ballots;
  - (c) marking of voters with an identifying mark;
  - (d) assisting voters who need assistance;
  - (e) ensuring that ballots are deposited into the ballot box;
  - (f) ensuring that full ballot boxes are sealed and stored in a secure place within the voting station; and
  - (g) counting of ballots papers.
- (5) The presiding officer is responsible for -
  - (a) managing, co-ordinating and supervising the voting at the voting station;
  - (b) taking all reasonable steps to ensure orderly conduct at that voting station;
  - (c) directing a security member to assist in ensuring orderly conduct;
  - (d) excluding persons for valid reasons from the area within the boundary of the voting station; and
  - (e) making all determinations, recommendations and decisions regarding disputes and any other matter relating to the voting process within the voting station, including the decision

whether or not a dispute should be referred to the Election Tribunal, appointed in terms of these regulations.

- (6) Election staff must, upon appointment, subscribe to and sign a copy of the Code of Conduct for election staff as set out in Schedule B, which copies must be retained by the Independent Election Agency.
- (7) The Independent Election Agency may, subject to applicable labour legislation, terminate the appointment of any election staff member that contravened the Code of Conduct for election staff as set out in Schedule B to these regulations.
- (8) The Independent Election Agency is responsible for the training of election staff deployed at each voting station.
- (9) Election staff will be appointed by and be responsible to the Independent Election Agency, under such terms and conditions as that Agency may determine, and the Department will not be contractually or otherwise liable for any dispute arising between the Agency and the staff appointed by it or for the conduct of the Agency or any of its staff.
- (10) In appointing the election staff from the local community the election agency must exercise fairness, equity and equality and avoid practices that may be viewed as bias, nepotism or favouritism.

### **13. Registration of voters and compilation of voters' roll**

- (1) A voters' roll must be compiled by the Department, in consultation with the Independent Electoral Commission, for each voting district before the date of the election is proclaimed: Provided that the Department ensures that the affected communities are sufficiently informed of the voter registration.
- (2) The Department must, in compiling a voters' roll, take into account the provisions of Chapter 2 of the Electoral Act.
- (3) The voters' roll compiled in terms of subregulation (1) must be certified by the MEC as accurate prior to the proclamation of the date of the election.

### **14. Election material**

The Independent Election Agency must ensure the availability at voting stations of adequate voting material as set out in Schedule C, including any equipment that may be required for the success of the election process.

### **15. General management of the election**

- (1) The Department will oversee and monitor the election process, the performance of the Independent Election Agency and any incidental matters.
- (2) The Independent Election Agency must manage the elections and any contract entered into between the Department and the Independent Election Agency, in order to ensure free and fair elections.
- (3) The Department must provide funding for the elections in accordance with the budget submitted by the Independent Election Agency and approved by the Department in terms of the procurement process.
- (4) The Department must, subject to regulation 7(6), make available sufficient staff to assist the election agency in managing the elections in terms of these regulations.
- (5) The Head of Department must ensure that sufficient security personnel are available at venues where the nomination of candidates and voting in terms of these regulations, will take place.

## 16. Hours of voting

The voting hours for the election must be from 07: 00 - 19: 00 unless the MEC determines otherwise by notice in the *Provincial Gazette*.

## 17. Boundaries of voting stations

- (1) Prior to voting day, the presiding officer, after consultation with the Senior Traditional Leader, 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, where practically possible, marking the boundary by using visible signs, markers or tape along the whole line of the boundary or at sufficient points along the line of the boundary.

## 18. Mobile voting stations

- (1) The Independent Election Agency may decide, when necessary, 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, stopping times and venues of the mobile voting stations.
- (2) The same procedures outlined in regulations 12 and 13 should be followed when a mobile voting station is used.

## 19. Initial procedures

- (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 an official seal, to the satisfaction of all persons present, by closing all openings of the ballot box except the slot to allow the completed ballot papers to be deposited therein.

## 20. Voting procedure

- (1) A voter-
  - (a) may vote in an election only at the voting station in the voting district in which that voter is registered;
  - (b) may cast such number of votes equal to the number of vacancies to be filled during the election concerned; and
  - (c) must cast the votes as contemplated in subregulation (1)(b), by indicating his or her choices on one ballot paper contemplated in subregulation (4)(d). Appendix 8 contains a specimen ballot paper in this regard.
- (2) A voter may vote at a voting station -
  - (a) on production of that voter's valid South African identity document to the presiding officer or a voting officer at the voting station; and
  - (b) if that voter's name is on the certified segment of the voters' roll for the 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 voting district concerned; and
  - (c) that voter has not already voted in the election concerned.
- (4) If the presiding officer or voting officer concerned is satisfied in respect of all the matters mentioned in subregulation (3), that officer must -
- (a) record that the voter is regarded to have voted in the election;
  - (b) mark the hand of the voter as described in regulation 23;
  - (c) mark the back of the ballot paper to which the voter is entitled 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)(c), the voter must -
- (a) enter an empty voting compartment;
  - (b) mark the ballot paper in secrecy in a way that indicates the candidates the voter wishes to vote for;
  - (c) fold the ballot paper to conceal the voter's votes;
  - (d) take the ballot paper to a ballot box and show it to the presiding officer or a voting officer in a way that that officer can see the official stamp affixed in terms of subregulation (4)(c);
  - (e) place the ballot paper in the ballot box; and
  - (f) without delay leave the voting station.

## **21. Assistance to certain voters**

- (1) A person, other than the presiding officer or a voting officer, may assist a voter in voting, but only if -
- (a) the voter requires assistance due to physical disability;
  - (b) the voter has requested to be assisted by that person; and
  - (c) the presiding officer is satisfied that the person rendering assistance is -
    - (i) at least 18 years old or older; and
    - (ii) not an observer 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) a person appointed by an accredited observer, if available; and
  - (b) a voting officer.
- (3) In applying this section, the secrecy of voting must be preserved as far as possible.

## **22. Issue 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 then hand the voter a new ballot paper.

### **23. Marking of hand**

- (1) The hand of a voter must be marked by drawing a short line on the voter's left thumb and 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 the voter's left thumb and left thumb nail, 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), 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.

### **24. Sealing of ballot boxes**

- (1) The presiding officer, in the presence of any observer or candidate 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.

### **25. Completion of ballot paper statement and sealing of voting material**

As soon as practicable after a voting station has been closed for voting, the presiding officer, in the presence of any observer or candidate, must -

- (a) complete a ballot paper statement on a form similar to Appendix 3 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; and
  - (vii) cancelled ballot papers;
- (b) seal each unused ballot box entrusted to that presiding officer;
- (c) seal in separate containers -
  - (i) the certified segment of the voters' roll for the voting district;
  - (ii) the unused ballot papers entrusted to that presiding officer; and
  - (iii) the cancelled ballot papers.

### **26. Counting Procedures**

- (1) The presiding officer must ensure that the procedures provided for in these regulations commence as soon as practicable after the voting station is closed for voting and continue uninterrupted until they are completed.

- (2) The presiding officer must, before counting commences, examine whether the seals are intact on the sealed items.
- (3) After examining the seals, the presiding officer must open all the sealed ballot boxes and containers and must deal with any irregularities and discrepancies found, and if any of the material appears to have been unlawfully tampered with or is missing, the presiding officer must call in the assistance of a member of the security personnel to investigate the matter and to assist in the search for any missing material.
- (4) If no discrepancies are found, the presiding officer must open all the used sealed ballot boxes and must reject a ballot paper that indicates -
  - (a) the identity of the voter;
  - (b) a vote cast for more than one candidate;
  - (c) no mark or that is marked in such a way that it is not reasonably possible to determine the voter's choice;
  - (d) the official mark not appearing on the back of the ballot paper; or
  - (e) that it is not an official ballot paper.
- (5) The presiding officer must -
  - (a) mark "rejected" on the back of each rejected ballot paper; and
  - (b) file the rejected ballot papers separately.

## **27. Procedure concerning results and voting material**

- (1) The presiding 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 on a form substantially similar to Appendix 4, reflecting the result of the count in respect of the election conducted at the voting station.
- (2) The presiding officer must thereafter prepare a list containing only the names of the female candidates and the votes each such candidate has received.
- (3) The female candidates equal to one third of the total number of vacancies to be filled, who received the highest number of votes, are duly elected to the Traditional Council, to the extent that a sufficient number of female candidates have been voted for.
- (4) The balance of the vacancies will be filled by those remaining candidates, both male and female, who received the highest number of votes.
- (5) Notwithstanding subregulations (3) and (4), no candidate may be declared duly elected unless he or she received at least one vote during the election.
- (6) The presiding officer must announce the provisional result of that voting station concerned after completion of the ballot paper statement.
- (7) Once the presiding officer has complied with subregulations (1) to (6), he or she must seal all the voting material, including the used and unused ballot papers, together with the ballot paper statement, in separate containers and count all the ballot papers cast in that voting station at a neutral place determined by the presiding officer.
- (8) Once the results of each voting station have been obtained, the presiding officer will forward all such results to the Independent Election Agency to enable the Independent Election Agency to declare the final result at a traditional community meeting called by the presiding officer after consultation with the Senior Traditional Leader, for that purpose.

- (9) The traditional community meeting contemplated in subregulation (8) must be held within 7 days after the Independent Election Agency has determined the final results.

## **28. Election ties**

- (1) After the counting of all votes and before the announcement of results at a traditional community meeting, election ties which may affect the determination of the duly elected councillors, must be resolved by conducting a draw using identical envelopes with the names of the candidates who are involved in the tie, each placed in a separate, identical envelope.
- (2) The draw of an envelope must be presided over by the presiding officer who must, at his or her discretion, designate anyone present to select an envelope.
- (3) A candidate whose name is selected first by the person so designated in terms of subregulation (2), must be declared duly elected.
- (4) In the instance that more than two candidates are involved in a tie, the procedure as contemplated in subregulations (1) to (3) must be repeated until the appropriate number of candidates has been so identified.
- (5) The results of the draw must form part of the results announced at a traditional community meeting convened for that purpose by the presiding officer.

## **29. Election disputes and appeals**

- (1) Where any interested party, including an observer or candidate, wishes to lodge a complaint regarding the procedures or processes followed in conducting the election or the results of the election, such interested party must do so by lodging such complaint in writing with the presiding officer at the voting station concerned.
- (2) The presiding officer must seek to resolve any such dispute through mediation or negotiation, failing which the presiding officer must make a decision.
- (3) The presiding officer must record the complaint concerned and his or her decision regarding such complaint and inform the objector and any other party involved or affected, in writing, 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 48 hours, in a form substantially similar to Appendix 5, after receipt of the presiding officer's decision regarding the complaint, with the chairperson of the election tribunal established in terms of regulation 30.

## **30. The establishment of an Election Tribunal**

- (1) The MEC must immediately after the proclamation of the election date, establish an Election Tribunal consisting of not less than three people and not more than five persons.
- (2) The members of the Tribunal must be fit and proper persons and must possess at least one 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
  - (e) Any other competency as may be identified by the MEC.
- (3) The MEC must appoint one of the members of the Tribunal as the chairperson of the Tribunal.



- (4) The Tribunal must adopt rules of procedure for the conduct of its business.
- (5) The Tribunal will have jurisdiction over all election matters and infringements of any of the Codes of Conduct referred to in these regulations and may take any decision and may impose any sanction as set out in these regulations.
- (6) The Tribunal may, at its discretion, after having had regard to the nature and magnitude of the transgression or complaint refers the matter to other competent forum.
- (7) The Tribunal must convene within 3 days after a complaint has been duly lodged.
- (8) The term of office of the Election Tribunal ends on a date as determined by the MEC.
- (9) The powers of the Election Tribunal are be as contemplated in Schedule E.

### **31. Swearing in of elected councillors**

- (1) A newly elected member of a Traditional Council must be sworn in by a person designated by the MEC within 7 days after the name of such newly elected member has been published in the *Provincial Gazette* by the MEC in terms of regulation 7(1)(d) or 32(6), by taking the oath as contained in Schedule G.
- (2) Where the terms of office of the outgoing Traditional Council has expired and until the newly elected members have been sworn in, the Senior Traditional Leader and the staff of the Traditional Council must assume the day-to-day functions of the Traditional Council.
- (3) Every Traditional Council must, after its members have been sworn in, proceed to elect a deputy chairperson.
- (4) The election of the deputy chairperson must be conducted by calling for the nominations and secondment of nominations for that position.
- (5) Each nominated person referred to in subregulation (4) must first indicate their acceptance of such nomination.
- (6) The election referred to in subregulation (4) must be conducted by means of secret ballot.
- (7) A Traditional Council must adopt such rules to provide for other positions and subcommittees as may be necessary to conduct its business.

### **32. Filling of vacancies**

- (1) Whenever a vacancy arises in any Traditional Council in terms of section 8 of the Act, and subject to subregulations (2) and (3), the vacancy occurring in such Traditional Council must be filled by the candidate who received the next highest number of votes in the election contemplated in these regulations.
- (2) A candidate who did not receive any votes in an election may not become a member of the Traditional Council in terms of subregulation (1) and is regarded as being disqualified.
- (3) In the event that a female member of the Traditional Council vacated her position as a member of the Traditional Council, the next available female candidate on the list of remaining candidates who received the highest number of votes in the election concerned, must fill the vacancy.
- (4) In the instance that the next candidate who obtained the highest number of votes in the election concerned, is for whatever reason not available to fill the vacancy, the next candidate with the highest number of votes will become a member of the Traditional Council, to be repeated as often as may be necessary until the vacancy concerned has been filled.
- (5) In the instance that a tie exists among the candidates on the list, such a tie will be resolved in terms of regulation 28.

- (6) The name of the candidate who becomes a member of the Traditional Council in terms of this regulation must be proclaimed in the *Provincial Gazette* by the MEC.
- (7) In the instance that no candidate is available to take up the membership in a Traditional Council in terms of this regulation, a new election must be conducted afresh in terms of these regulations.
- (8) In the event that a new election must be conducted as contemplated in subregulation (7), the MEC must proclaim the date for the by-election in the *Provincial Gazette* and allow for the required number of days to conduct the election.
- (9) In the instance that a vacancy occurred in a Traditional Council which was elected in accordance with these regulations, the voters' roll to be used for such by-election is the voters' roll as it exists on the date that the MEC proclaims the date of the by-election: Provided that only those segments of the voters' roll for those traditional wards affected by the vacancy, may be utilised.
- (10) The councillor elected during the by-election is elected for the remainder of the term of office of the members of the existing Traditional Council.

### **33. Code of Conduct for candidates**

- (1) Every candidate participating in the election is bound by and must comply with these regulations and the Act as well as the Code of Conduct for candidates provided for in Schedule D.
- (2) Any candidate who contravenes or fails to comply with the Code of Conduct for candidates is guilty of a criminal offence and on conviction liable to a fine or imprisonment not exceeding one year or to both such fine and such imprisonment.

### **34. Election observers**

- (1) Any person or organisation that wishes to observe a Traditional Council election must apply in a form substantially similar to Appendix 6, to the presiding officer concerned, in respect of the election conducted in accordance with these regulations, or to the Independent Election Agency, in respect of an election conducted in accordance with these regulations, for accreditation as an observer to observe such election.
- (2) After having duly considered an application referred to in subregulation (1), the presiding officer or the Independent Election Agency, as the case may be, must forthwith, in writing, indicate to the applicant concerned, whether such application has been granted or not, including any conditions applicable to such approval.
- (3) Every accredited observer is bound by the Code of Conduct for accredited observers as set out in Schedule F.

### **35. Election campaigns**

Election campaigns must be conducted in accordance with the provisions of these regulations.

### **36. Declaration of secrecy**

Upon appointment as a presiding officer, deputy presiding officer or voting officer, the declaration of secrecy must be signed by such person in a form substantially similar to Appendix 7, and retained by the Head of Department.

### **37. Offences**

- (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 Election Agency, any member, employee or officer of the Independent Election 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 -
    - (i) representative of a candidate;
    - (ii) candidate in an election;
    - (iii) member, employee or officer of the Independent Election Agency;
    - (iv) person appointed by an accredited observer; or
    - (v) person accredited to provide voter education,from gaining reasonable access to voters, whether in a public or private place.
- (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 any person 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.
- (5) 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;
    - (ii) a candidate in an election;
    - (iii) a member, employee or officer of the Independent Election Agency;
    - (iv) a person appointed by an accredited observer; or
    - (v) a person accredited to provide voter education.

- (6) No person, when required in terms of these regulations to make a statement, may make a statement -
  - (a) knowing that it is false; or
  - (b) without believing on reasonable grounds that the statement is true.
- (7) 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.
- (8) No person may interfere with a voter's right to secrecy while casting a vote.
- (9) 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.
- (10) No person may, without the prior, written authorisation of the Independent Election Agency -
  - (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.
- (11) From the date on which an election is proclaimed to the date the result of the election is determined and declared, no person may deface or unlawfully remove any billboard, placard or poster published by a candidate.
- (12) No person may refuse or fail to give effect to a lawful direction, instruction or order of the Independent Election Agency, or a member, employee or officer of the Independent Election Agency, or a designated officer.
- (13) No person may obstruct or hinder the Independent Election Agency, or a person mentioned in subregulation (12), or a person appointed by an accredited observer, in the exercise of their powers or the performance of their duties.
- (14) No person may make a false statement or furnish false particulars in any application or in any other document prescribed in these regulations.
- (15) No person may -
  - (a) unlawfully carry or display a dangerous weapon within the boundaries of the voting station;
  - (b) on voting day, participate in any political meeting, march or demonstration within the are of jurisdiction of the Traditional Council concerned; or
  - (c) within the boundaries of the voting station, engage in any political activity other than casting a vote.

### 38. Penalties

Any person who commits an offence as contemplated in regulation 37 or who transgresses any provision of these regulations, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both such fine or imprisonment.

**39. Short title**

These regulations are called the Regulations for the Election of the 40% of Members of Traditional Councils, 2007.

## Schedule A

### Number of members of Traditional Councils

<b>A: Selected Members</b>	<b>B: Senior Traditional Leader</b>	<b>C: Minimum Number of Women Selected (being 33, 3% of A + B)</b>	<b>D: Elected Members</b>	<b>E: Minimum Number of Women Elected (being 33, 3% of D)</b>	<b>F: Total Members (being A + B +D)</b>
17	1	6	12	4	30 (maximum)
16	1	6	12	4	29
15	1	6	11	4	27
14	1	5	10	4	25
13	1	5	10	4	24
12	1	5	9	3	22
11	1	4	8	3	20
10	1	4	8	3	19
9	1	4	8	3	18
8 -	1	3	6	2	15
7	1	3	6	2	14
6	1	3	5	2	12
5	1	2	4	2	10
4	1	2	4	2	9

Note: Explanation of formula to determine the number of members of the Traditional Councils.

\*The determination of the number of members of a Traditional Council is based on the custom where a Senior Traditional Leader selects a person / indvuna from each traditional ward / village/ isigodi / administrative area /

kgoro / ilali within the jurisdictional area of the Traditional Council concerned to be a member of the 60% selected portion of the Traditional Council. Where the number of administrative areas exceeds 17 the Senior Traditional Leader must, in consultation with the MEC, combine such areas in order to arrive at a maximum of 17 members, or the Tindvuna may elect among themselves 17 members to serve in the Traditional Council. This figure constitutes the 60% portion of a Traditional Council (being columns A and B above). To determine the total number of the members of the Traditional Council concerned, the following formula is used: 100/60 multiplied by the number of selected members. To determine the 40% portion of the members of the Traditional Council to be elected, the following formula applies: 40/100 multiplied by the total number of members of the Traditional Council.

## **Schedule B**

### **Code of conduct for election staff**

All designated officers must:

1. Report for work on time and remain in attendance until officially released;
2. Abide by the instructions given by the Presiding Officer and Deputy Presiding Officer;
3. Carry out all assigned duties competently and efficiently;
4. Be and act impartial and not favour or side with any candidate;
5. Serve voters with respect, dignity and courtesy;
6. Be accurate and thorough in their work;
7. Perform their work diligently and with integrity;
8. Preserve the secrecy of the vote;
9. Treat their colleagues, observers and security personnel with respect;
10. Dress appropriately and be presentable;
11. Conduct themselves in a professional manner;
12. Ensure 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 Presiding Officer for clarity on issues as and when necessary.

During Election Day, the election staff 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 candidates name, signs or logos;
6. Abuse voting equipment for personal interests;
7. Use drugs or alcohol-related substances; or
8. Disclose any information regarding how a voter has voted.

## **Schedule C**

### **Voting material**

The following minimum voting material is required at each voting station:

Ballot papers;

Ballot boxes;

Voting compartments;

The certified segment of the voters' roll for the voting district;

Indelible ink;

Seals;

Official stamps;

All prescribed forms;

Pencils and pens;

Rulers;

Boundary tape;

Banners;

Industrial tape;

Envelopes;

Paper clips;

Stickers and name tags;

Punch.

## **Schedule D**

### **Code of conduct for candidates participating in Traditional Council elections**

Candidates must -

- (a) tolerate democratic, political activity;
- (b) free political campaigning and open public debate;
- (c) promote and adhere to the principles of free and fair elections;
- (d) adhere to and comply with the provisions of the Act and these regulations;
- (e) duly cooperate with and acknowledge the role of the Department and the Independent Election Agency;
- (f) acknowledge and respect the rights of women to participate in free and fair elections;
- (g) refrain from committing any offence as contemplated in regulation 37.



## Schedule E

### 1. Institution of and intervention in civil proceedings

- (1) Subject to these regulations and any other law, the MEC either personally or through the Independent Election Agency may institute civil proceedings before a court to enforce a provision or provisions of these regulations.
- (2) The MEC either personally or through the Independent Election Agency may intervene in any civil proceedings if the MEC or Independent Election Agency has a legal interest in the outcome of those proceedings.

### 2. Jurisdiction and powers of Election Tribunal

- (1) The Election Tribunal has jurisdiction in respect of all election disputes and complaints regarding infringements of any of the Codes of Conduct.
- (2) If the Election Tribunal finds that a candidate has contravened a provision of these regulations it may, in the interest of a free and fair election, impose any one or more of the following sanctions, namely -
  - (a) a formal warning;
  - (b) a fine not exceeding R10 000;
  - (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; or
  - (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;
  - (g) an order disqualifying the candidature of that person;
- (3) Any penalty paid in terms of this regulation is payable to the magistrate's court in whose area of jurisdiction the matter arose.

## Schedule F

### Code of conduct for accredited observers

1. Every accredited observer and person appointed by the observer must-
  - (a) Observe the election impartially and independently of any candidate contesting the election.
  - (b) Remain non-partisan and neutral.

- (c) Be competent and professional in observing the election.
  - (d) Provide the Independent Election Agency with a comprehensive review of the election taking into account all relevant circumstances including -
    - (i) the degree of impartiality shown by the Independent Election Agency;
    - (ii) the degree of freedom of candidates to organize, move, assemble and express their views publicly;
    - (iii) the opportunity for candidates to have their agents observe all aspects of the election process;
    - (iv) the fairness of access for candidates to national media and other resources of the state;
    - (v) the proper conduct of polling and counting of votes; and
    - (vi) any other issue that concerns the essential freedom and fairness of the election.
  - (e) Comply with all instructions given and every obligation imposed by -
    - (i) the Independent Election Agency;
    - (ii) any designated officer;
    - (iii) any employee or officer of the Independent Election Agency; or
    - (iv) 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-
- (a) Avoid doing anything that would indicate or be seen as indicating partisan support for a candidate.
  - (b) Act in a strictly neutral and unbiased manner.
  - (c) Disclose to the Independent Election 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.
  - (d) Not accept any gifts or favour from a candidate, organization or person involved in the election process.
  - (e) Not participate in any function or activity that could lead to a perception of sympathy for a particular candidate.
  - (f) Not express a view or opinion on any matter, which is the subject of electoral campaigning.
  - (g) Not influence or attempt to influence the choice of a voter regarding any candidate in an election.
  - (h) Not wear, carry, or display any political party's symbols or colours.

## Schedule G

### Oath by a member of a Traditional Council

Oath of office or solemn affirmation of \_\_\_\_\_

I, \_\_\_\_\_, do hereby swear/solemnly affirm to be faithful to the Republic of South Africa and undertake before those assembled here to hold my office with honour and dignity; to respect and uphold the [Constitution](#) and all other Law of the Republic of South Africa; to be a true and faithful Member of the \_\_\_\_\_ Traditional Council; not to divulge directly or indirectly any matters which are entrusted to me under secrecy; and to perform the duties of my office conscientiously and to the best of my ability.

(in the case of an oath: So help me God.)

## Appendix 1

### Independent Election Agency

#### *Nomination of candidates for Traditional Council Election*

Election date:

Traditional Community:

Traditional ward:

I \_\_\_\_\_ Identity number: \_\_\_\_\_ being ordinarily resident being ordinarily resident in the above-mentioned Traditional Community and traditional ward and being registered as a voter on that Traditional Community's segment of the voters' roll, hereby nominate

\_\_\_\_\_

Identity number: \_\_\_\_\_ to contest the election in the above-mentioned Traditional Community as a candidate.

Attached are -

- (a) the prescribed acceptance of nomination signed by the candidate;
- (b) a certified copy of the page of the candidate's identification document on which the candidate's photo, name and identity number appear.

Signature of nominator: \_\_\_\_\_

Place: \_\_\_\_\_

Contact details of -

(a) Nominator: \_\_\_\_\_

(b) Candidate: \_\_\_\_\_

Date: \_\_\_\_\_

## Appendix 2

### Independent Election Agency

#### *Acceptance of nomination by a candidate for a Traditional Council election*

Election date:

Traditional Community:

Traditional ward:

Name/s and surname of the candidate: \_\_\_\_\_

Identity number of the candidate: \_\_\_\_\_

Any other name or non-offensive nickname by which the nominee is known in the community:

\_\_\_\_\_

Physical address of the candidate including the traditional ward or village concerned: \_\_\_\_\_

Date of nomination as candidate: \_\_\_\_\_

Name and signature of the person seconding the nomination: \_\_\_\_\_

I, the above-mentioned candidate hereby accept my nomination as a candidate in the above-mentioned election and I hereby confirm that my nomination is valid only for the election to be held on \_\_\_\_\_.

\_\_\_\_\_

Signature of candidate:

Date: \_\_\_\_\_

Place: \_\_\_\_\_

\_\_\_\_\_

Name, signature and designation of Independent Election Agency Representative:

Date: \_\_\_\_\_

Place: \_\_\_\_\_

### Appendix 3

#### Independent Election Agency

##### *Presiding officer's ballot paper statement in a Traditional Council election*

Election date:

Traditional Community:

Voting District:

Traditional ward:

Voting Station:

#### Part 1 – Ballot boxes

Total number of ballot boxes received	
Total number of ballot boxes received	
Number of unused ballot boxes	
Used plus unused must equal total received	

## Part 2 – Ballot papers

(a)	Total no. of ballot papers received	
(b)	Total no. of ballot papers issued	
(c)	Total no. of ballot papers unissued	
(d)	Total (b) + (c)	
(e)	Total no. of ballot papers cancelled	
(f)	Total of ballot papers in the used boxes	
(g)	Total (e) + ( f )	

Note:

The figures in row (d) should be the same as that in row (a).

The figures in row (g) should be the same as that in row (b).

---

Signature of Presiding Officer

Date:

## Appendix 4

### Independent Election Agency

*Results form to be completed by the presiding officer in respect of votes cast for candidates in a Traditional Council election*

Election date:

Traditional Community:

District Management Area [If applicable]:

Voting District:

### *Results of count*

<b>Candidate name</b>	<b>Number of votes</b>	<b>Signature of candidate/agents/ observer</b>
Signature of Presiding Officer:	Name of Presiding Officer:	Identity number:
Date:	Telephone contact number:	After Hours contact number:

**Appendix 5**

**Independent Election Agency**

***Objection concerning voting in a Traditional Council election***

---

Election date:

Traditional Community:

Voting District:

Traditional ward:

---

***Objector***

Identity number: \_\_\_\_\_

Full names: \_\_\_\_\_

Agent/Candidate/Voter: (Where applicable): \_\_\_\_\_

I object to:

# A voter being allowed to vote

# A voter being allowed to vote at this station

# A voter (or myself) being refused a ballot paper

# The conduct of an officer, an agent or other person at this voting station

Reasons for objection (giving full particulars of voter, officer, agent or other person involved)

\_\_\_\_\_

Signature of Objector

Date

Presiding Officer's decision

\_\_\_\_\_

Signature of Presiding Officer

Date

\_\_\_\_\_

Decision noted: Signature of Objector

Date

## Appendix 6

### Independent Election Agency

#### *Application for accreditation as observer in a Traditional Council election*

Application in respect of a Traditional Council election to take place on \_\_\_\_\_ (Date of election)

1.1 Name of Applicant:

1.2 Address of Registered Office of Applicant

1.3 Telephone Number:

1.4 Facsimile Number (if any):

1.5 E-mail Address (if any):

1.6 Registration Number of Applicant (if applicable):

1.7 Date of Founding:

1.8 Number of persons that will be appointed as observers:

1.9 Person in charge of co-ordinating the applicant's observers:

1.10 Mark or Symbol of applicant:

1.11 Particulars of persons appointed by applicant:

Name	Capacity	Identity/ Passport Number	Nationality	Date of arrival in and departure from South Africa (if applicable)

NB. If the space is insufficient, full scale paper on which the necessary columns have been drawn, may be used.

Supporting Documents:

The application must be accompanied by the following:

- (a) Copy of deed of foundation or constitution of the applicant.
- (b) A statement of the reasons why the applicant is suitable for accreditation to observe the election process.
- (c) An affirmation that the applicant commits to co-operate with the Independent Election Agency in relation to the training, conduct and deployment of persons.

We hereby apply for accreditation as observer and certify that the particulars furnished in this form and the supporting documents are true and correct, and certify that all persons appointed by us will subscribe to the Code of Conduct for accredited observers.

\_\_\_\_\_  
 Signature of duly authorized person on behalf of applicant

Applicant: \_\_\_\_\_

Name: \_\_\_\_\_



## Appendix 7

### Independent Election Agency

#### *Declaration of secrecy in a Traditional Council election*

Election date:

I, \_\_\_\_\_ (full names) in my capacity as \_\_\_\_\_ hereby -

- (a) acknowledge that I will be officially involved in a Traditional Council election;
- (b) acknowledge that in my position as indicated above, information and documentation regarding a Traditional Council election will be disclosed to me;
- (c) agree and confirm that I will treat all such information and documentation in the strictest confidence and that I will protect it and not disclose it to any person, unless authorized to do so;
- (d) confirm that I will be bound by this Declaration of Secrecy notwithstanding the termination of my appointment.

\_\_\_\_\_

Signature:

Date: \_\_\_\_\_

\_\_\_\_\_

Witness:

Date: \_\_\_\_\_

## Appendix 8

### Specimen ballot paper

In the instance that, for example, five vacancies need to be filled on a Traditional Council during an election as contemplated in these regulations, a voter may vote for not more than five candidates whilst the ballot paper must contain the names of at least 10 candidates. The voter may, for example, therefore indicate his or her choices as follows:

Name of candidate	Mark
AAA	
BBB	X
CCC	
DDD	X
EEE	X
FFF	
GGG	
HHH	X
III	
JJJ	X