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PROVINCIAL NOTICES • PROVINSIALE KENNISGEWINGS

PROVINCIAL NOTICE 74 OF 2017


DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL
AFFAIRS

PUBLICATION OF THE REGULATIONS

by the

Member of the Executive Council

I **Fikile Xasa**, Member of the Executive Council responsible for Cooperative Governance and Tradition Affairs acting in terms of section 28 of the Eastern Cape Customary Male Initiation Practice Act, 2016 (Act No. 5 of 2016) hereby publish the draft Regulations on the processes and procedures for conducting customary male initiation and the roles and functions of different stakeholders involved in customary male initiation programmes.

**Fikile Xasa**

Member of the Executive Council

Responsible for Cooperative Governance and Traditional Affairs

DEPARTMENT OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS

INVITATION OF WRITTEN COMMENTS AND INPUTS ON THE CUSTOMARY MALE INITIATION PRACTICE REGULATIONS

1. The Department of Cooperative Governance and Traditional Affairs hereby invites members of the public or body/organisation to provide written comments and inputs on the draft regulations as contained in the schedule hereto.
2. The main objects of the regulations are among others to—
 - Provide processes and procedure for conducting customary male initiation; and
 - Provide for the roles and functions of different stakeholders involved in customary male initiation programmes.
3. The closing date for comments on the draft regulations is 30 calendar days from the date of the publication of this notice in the Gazette.
4. Comments may be submitted in writing to:

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

5. Comments may also be-

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

6. **All comments must be clearly marked for the attention of;**
Deputy Director-General: Traditional Affairs
Mr M. Baza

**REGULATIONS ON THE PROCESSES AND PROCEDURES FOR
CONDUCTING CUSTOMARY MALE INITIATION AND THE ROLES
AND FUNCTIONS OF DIFFERENT STAKEHOLDERS INVOLVED IN
MALE INITIATION PROGRAMMES**

ARRANGEMENT OF THE REGULATIONS

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1. Definitions

In these regulations any word or expression to which the meaning has been assigned in the Eastern Cape Customary Initiation Bill, shall have that meaning and, unless the context otherwise indicates—

“initiate” means a person who undergoes initiation at a traditional initiation school;

“initiation school” means a place where one or more initiates are kept while undergoing the rite of passage to manhood;

“MEC” means a Member of Executive Council responsible for Cooperative Governance and Traditional Affairs in the Province;

“parent” means the lawful and natural father or mother of a prospective initiate and can include an adoptive parent or guardian of such an initiate or prospective initiate;

“provincial department” means any provincial department of the Eastern Cape Province as contemplated in section 4 of the Act.

“traditional leadership” means the customary institution or structure or customary system or procedure of governance recognized, utilized or practiced by traditional communities;

“traditional surgeon” means a person who has been culturally trained with experience in performing circumcision in the traditional male initiation and registered with relevant authorities in accordance with section 20 of the Act, and includes *ingcibi* or any other name given to such person in terms of the custom and practice of the relevant community;

“traditional nurse” means a person who looks after the initiates at an initiation school, and includes *ikhankatha* or any other name given to such a person in terms of the custom and practice of the relevant community.

“the Act” means the Eastern Cape customary male initiation practice Act, 2016 (Act, No. 5 of 2016).

2. The Scope of application of the regulations

These regulations seeks to regulate the processes, procedures for conducting customary male initiation and to provide for the role and functions of different stakeholders involved in the initiation programmes in the Province and such they are applicable but not limited to the following stakeholders—

- (a) all provincial departments involved in the customary male initiation programmes in terms of the Act;
- (b) all municipalities in the Province;
- (c) houses of traditional leaders in the Province;
- (d) traditional leaders;
- (e) traditional surgeons;
- (f) traditional nurses; and
- (g) any interested body or organization as identified by any coordinating structure established in terms section 4, 6, 8, 10 or 12 of the Act to take part in the initiation programmes.

3. Interpretation

A person interpreting or applying these regulations must:

- (a) do so in a manner that gives effect to the constitutional declaration guarantees and responsibilities contained on the Eastern Cape Customary Male Initiation Act;
- (b) take into account the traditions and customs applicable to the Traditional Community provided they do not contradict with the legislative Framework.

4. Problem Statement

The Eastern Cape Province has experienced lots of challenges in relation to the practice of customary male initiation wherein scores of young initiates have unnecessary lost their innocent lives and some suffered penal amputations. The Department of Health has in many occasions reported that some initiates have

committed suicide as a result of suffering penile amputations. The available evidence and reports suggest that some of these challenges are as a result of lack of clear processes and procedures to be followed whilst conducting customary male initiation practice. These challenges have necessitated the Eastern Cape Provincial Government to institutionalize the practice of customary male initiation through legislation.

The Province has since promulgated an Act called Eastern Cape Customary Male Initiation Practice Act, 2016 (Act No. 5 of 2016) to govern the practice of customary male initiation in the Province. However, the Act does not make provision for the administration; processes; procedures and the roles of other stakeholders involved in customary male initiation programmes. Section 28 of the Act provides for the MEC responsible for Cooperative Governance and Traditional Affairs to make regulations to ensure effective implementation and administration of the Act.

5. Determination of fees payable for admission in an initiation school

- (1) An initiation working committee, must in consultation with the; traditional leadership; community members; community structures; local and district initiation forums and where applicable a forum or committee of traditional leaders, determine an amount payable for admission in an initiation school, in accordance with customs and customary practice of communities or tribes concerned.
- (2) The determination of fees must provide for a—
 - (a) maximum amount payable for admission into a male initiation school which does not provide initiates with food and related support; and
 - (b) maximum amount payable for admission into a male initiation school that provides food and necessary support to initiates during their stay in the initiation school;
 - (c) the maximum amount payable to a traditional nurse
- (3) In determining the fees, an initiation working committee must ensure that the determined amount discourages the commercialization of male initiation practice.

- (4) The initiation working committee must when registering traditional surgeons in their database, inform them of the terms and conditions of conducting initiation school within their jurisdictional areas.
- (5) The terms and conditions must include but not limited to the following—
- (a) that a traditional surgeon will not exceed the amount of fee per initiate as determined by the initiation working committee;
 - (b) that a traditional surgeon will not perform circumcision on any initiate in the absence of a member of an initiation working committee; and
 - (c) that a traditional surgeon may not perform circumcision to an initiate as part of initiation before the commence of school holiday or beyond the timeframes of a school holiday.
- (6) After determining the fees payable for admission contemplated in sub-regulation (2) (a)- (c), an initiation working committee, through any means of communication use to disseminate information within the communities concerned, must inform such communities of the determined fees payable for admission.
- (7) Fees determined in accordance with this regulation may be revised on advice and at the request of affected parties after consultation by the initiation working committee with relevant initiation coordinating structures.
- (8) When registering prospective initiates, members of the initiation working committee must inform parents of the prospective initiates of the amount they must pay to traditional surgeons for performing circumcision procedure and ultimately for admission in an initiation school.
- (9) Where practical possible payment for admission in an initiation school by the parents of the initiate must be made in the presence of a member of an initiation working committee.

6. Determination of number of initiates to be admitted into an initiation school

- (1) An initiation working committee must in consultation with traditional communities; community structures within the jurisdiction of traditional

leadership or ward; local and district initiation forums determine the maximum number of—

(a) initiates to be admitted in an initiation school; and

(b) initiates to be treated and looked after by each traditional nurse

in accordance with customs and customary practice of traditional community; ward; tribe or clan concerned.

(2) Any person who wants to open an initiation school must have a child admitted in a customary male initiation school concerned and comply with the provisions of section 18 (1) of the Act.

(3) An initiation working committee must not give approval for the opening and conducting of a customary male initiation school to a person who does not have a child admitted in the school.

7. Procedure for the issuing of permission to perform circumcision

(1) The MEC responsible for Health matters in the Province must through a notice in the *Provincial Gazette* determine the month or months in which traditional surgeons must submit applications for permission to perform circumcision as part of initiation.

(2) The notice must provide contact details of offices in which applications should be forwarded.

(3) Permission to perform circumcision must only be issued to traditional surgeons recommended by an initiation working committee and where applicable by traditional leadership.

8. Duration of an initiation school

(1) When issuing a permission to traditional surgeons to perform circumcision as part of customary male initiation in terms of regulation 6, the MEC responsible for Health or any officer designated by him or her must reflect in such permit the timeframes within which such a traditional surgeon must perform circumcision or admit initiates in a customary male initiation school.

- (2) The timeframe for conducting or operating a customary male initiation school must not interfere or overlap with the official calendar or academic activities of educational institutions or schools.
- (3) If a customary male initiation school commences before a determined school holidays or continues beyond a school holiday, or is held outside the timeframes provided for in the permission issued in terms of regulation 6 as part of terms and conditions, the relevant traditional surgeon must be suspended from performing circumcision for period as may be determined by the relevant initiation working committee.
- (4) The provisions of this regulation do not apply to a customary male initiation school that is attended exclusively by initiates who have already completed schooling and working: Provided that such a customary male initiation school has complied with the requirements and criteria for setting and conducting of customary male initiation practice in terms of these regulations and the Act.

9. Partnerships in customary male initiation programmes

- (1) The MEC responsible for Cooperative Governance and Traditional Affairs must through a memorandum of understanding (**MOU**) enter into partnership with other sector departments and interested bodies involved in the initiation programme.
- (2) Any partnership contemplated in sub-regulation (1) must be in writing and—
 - (a) must in addition to any roles and functions provided in these regulations for each sector department; municipalities and identified interested bodies, contain clear provisions on the responsibilities of each sector department, municipalities and interested bodies and the termination of such partnership; and
 - (b) may not bind any person, department, interested body who is not a party to such partnership.

10. The role and functions of the Department of Education

- (1) Develop a curriculum on customary practices (including customary male initiation) of various tribes or clans within the Province and designate an educator to conduct lessons on a weekly or regularly basis to learners.
- (2) Provide platform in school facilities for the conducting of awareness campaigns pre and post initiation seasons by sector departments; government institutions and other stakeholders involved in customary male initiation programmes.
- (3) Determine in consultation with the affected and relevant stakeholders the appropriate school holiday for the conducting of male initiation.
- (4) Ensure that normal academic school calendar is in whatever way not disturbed by the holding and conducting of male initiation schools.

11. The role and functions of the Department of Social Development

- (1) Identify in consultation with the relevant initiation working committee and where applicable with traditional leadership, prospective initiates from poor families who have attained the age of undergoing customary male initiation ritual in terms of section 24 of the Act.
- (2) Conduct awareness on the protection of children against harmful practices in accordance with the Children's Act, (Act No. 38 of 2005).
- (3) Advocacy for the active involvement of parents or families of initiates in the whole customary male initiation processes and procedures.
- (4) Provide initiates with food parcels and other necessary support in consultation with the relevant initiation working committee and where applicable with traditional leadership before, during and after customary male initiation season.
- (5) Provide Psycho-social support and after care services to initiates as well as their family members.

12. The role and functions of the Department of Sports, Recreation, Arts and Culture

- (1) The Department will host youth camps aimed at training they would be initiates on the meaning of customary male initiation practice.
- (2) Develop criteria for the nomination of experts to serve in an advisory body on the subject.
- (3) Coordinate the sitting of the body and integrate its advice on all other relevant structures

13. The role and functions of the Department of Home Affairs

- (1) Issue identity documents to prospective initiates for the purpose of admission in a customary male initiation school.
- (2) Liaise with relevant coordinating structure of customary male initiation to assist and verify the authenticity of the identity document in instances where there are suspicions of any fraudulent use of an identity document for the purpose of admission in a customary male initiation school.

14. The role and functions of South African Police Services

- (1) Conduct safety and security awareness campaign in relation to the conducting of customary male initiation schools.
- (2) Attend to any complaint of a person being abducted or forcefully taken into an initiation school and ensure that perpetrators of such acts are brought before the court of law and face the full might of the law in accordance with the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Investigate any reported case of criminal activities taking place in a customary male initiation school and after investigation open a docket and submit the docket to NPA for prosecution.

- (3) Liaise with the prosecution authority in all cases related to customary male initiation and provide the necessary information and support to prosecutors to ensure successful prosecution.

- (4) Provide the necessary support to customary male initiation monitoring teams during the inspection of the initiation schools.
- (5) Upon request by the relevant male initiation coordinating structure, close all illegal male initiation schools as well as male initiation schools which do not comply with the conditions prescribed in the Act.

15. The role and functions of Municipalities

- (1) Develop by-laws in consultation with relevant initiation working committees, traditional leadership and communities on the practice of customary male initiation within the jurisdiction of a municipality.
- (2) Designate land or areas in consultation with all relevant and affected stakeholders in which customary male initiation schools should be conducted, taking into consideration the cultural peculiarities and sensitivities of different communities within the jurisdiction of a municipality about male initiation.
- (3) Provide the necessary support and resources (both human and capital) to initiation forums and committees as well as customary male initiation schools during the initiation seasons.
- (4) Establish a committee on tradition, culture and customs and provide the necessary support to such committee.

16. The role and functions of NGO's in customary male initiation programmes

- (1) Only an NGO or an interested body identified by any coordinating structure established in terms of the Act must get involved in a customary male initiation programme.
- (2) An identified interested body or NGO may conduct awareness programmes in consultation with the relevant coordinating structure after signing a memorandum of understanding with such coordinating structure.

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