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**E Phatlaladitsweng ka Tumello**

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## PROVINCIAL NOTICE

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[No. 29 of 2013]

### FREE STATE TRADITIONAL LEADERSHIP AND GOVERNANCE RECONSTITUTION OF TRADITIONAL COUNCILS REGULATIONS, 2013

Under section 31 of the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005), I, ES Magashule, Premier of the Free State Province, hereby publish the Regulations for general comment, as contained in the Schedule.

Comments must be submitted, in writing, on or before **21 June 2013** to:

Mr M. Mofokeng  
Director: Traditional Affairs  
Department of Cooperative Governance and Traditional Affairs  
PO Box 211  
BLOEMFONTEIN – 9300  
Room 102 LT Trust Building  
7 Elizabeth Street  
BLOEMFONTEIN

**Fax:** (051) 407 6745/56

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Any comments or representations received after **21 June 2013** will be disregarded.

**TSEBISO YA POROVENSE**

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[Ya Nomoro ya 29 ya 2013]

**BOETAPELE LE PUSO YA SETSO FOREISETATA  
HO ETSWA BOTJHA HA MELAWANA YA MAKGOTLA A SETSO, 2013**

Ka tlasa karolo ya 31 ya Molao wa Puso le Boetapele ba Setso Foreisetata, 2005 (Molao wa 8 wa 2005), Nna, ES Magashule, Poremia ya Porovense ya Foreisetata, ke phatlalatsa mona Melawana bakeng sa ditshwaelo tsa setjhaba, jwaloka ha e le Sekejuleng.

Ditshwaelo di lokela ho romelwa, ka ho ngolwa, pele ho kapa ka la **21 Phupu 2013** ho:

Mong M. Mofokeng  
Director: Traditional Affairs  
Department of Cooperative Governance and Traditional Affairs  
PO Box 211  
BLOEMFONTEIN – 9300  
Room 102 LT Trust Building  
7 Elizabeth Street  
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Imeile: [babalwa@fscogta.gov.za](mailto:babalwa@fscogta.gov.za), [moleko@fscogta.gov.za](mailto:moleko@fscogta.gov.za),

Ditshwaelo kapa ditlhaliso dife kapa dife tse tla fumanwa kamora la **21 Phupu 2013** di ke ke tsa shejwa.

## SCHEDULE

### Definitions

1. In these Regulations, any term to which a meaning has been assigned by the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005) (hereinafter referred to as the "Act"), have the meaning so assigned to it and, unless the context otherwise indicates, -
  - "**Amendment Act**" means the Traditional Leadership and Governance Framework Amendment Act, 2009 (Act No. 23 of 2009);
  - "**Community Members**" means members of the traditional council to be selected by the Senior Traditional Leader, consisting of ordinary community members and royal family members (RFM);
  - "**Constitution**" means the Constitution of the Republic of South Africa, 1996 (the "Constitution");
  - "**elected member**" means a total number of members of traditional community who occupy 40% of membership of the traditional council;
  - "**Electoral Forum**" means a forum established by the MEC to manage the processes of reconstitution of Traditional Councils;
  - "**Guidelines**" means guidelines issued by the National Department of Traditional Affairs, in the *Government Gazette*, Government Notice No. 354 on 21 April 2011, No. 34242;
  - "**lower threshold**" means the percentage or number of women that must be in the traditional council if there is an insufficient number of participation by women to constitute one third;
  - "**prescribed**" means prescribed by Regulations;
  - "**Provincial Act**" means the Free State Traditional Leadership and Governance Act, 2005 (Act No. 8 of 2005); and
  - "**royal family**" means the core customary institution or structure consisting of immediate relatives of the ruling family within a traditional community who have been identified in terms of custom, and includes, where applicable, other family members who are close relatives of the ruling family.

## SHEJULU

### Ditlhaloso

1. Ho Melawana ena, lereo lefe kapa lefe le filweng tlhaloso ke Molao wa Puso le Boetapele ba Setso Foreisetata, 2005 (Molao wa 8 wa 2005), (oo kamora mona o tla bitswang “Molao”), le na le tlhaloso eo le e filweng, ntle feela le ha tshebediso e bontsha ka tsela e nngwe, -

“**Ditataiso**” le bolela ditataiso tse ntshitsweng ke Lefapha la Naha la Ditaba tsa Setso, ho *Koranta ya Mmuso, (Government Gazette)*, Tsebiso ya Mmuso ya 354 ka la 21 Mmesa 2011, Nomoro ya 34242;

“**Ditho tsa Setjhaba**” le bolela ditho tsa lekgotla la setso tse lokelang ho kgethwa ke Moetapele wa Setso e Moholo, le nang le ditho tsa setjhaba le ditho tsa lelapa la boreneng (RFM);

“**e laetsweng**” e bolela e laetsweng ke Melawana;

“**Foramo ya Dikgetho**” e bolela foramo e thehilweng ke MEC ho laola mokgwatsamaiso wa ho botjwa botjha ha Makgotla a Setso;

“**Lelapa la Borena**” le bolela setheo sa setso sa motheo kapa sebopeho se bopilweng ka ba maloko a atamelaneng a lelapa le busang ka hara setjhaba sa setso ba qollotsweng ho ya ka moetlo, mme ba kenyeletsa, moo ho lokelang, ditho tse ding tsa malapa ao e leng leloko le haufi la lelapa le busang;

“**Molaotheo**” o bolela Molaotheo wa Rephaboliki ya Afrika Borwa, 1996 (Molaotheo”);

“**Molao wa Phetolo**” o bolela Molao wa Phetolo wa Moralo wa Puso le Boetapele ba Setso, 2009 (Molao wa 23 wa 2009);

“**Molao wa Provense**” o bolela Molao wa Puso le Boetapele ba Setso Foreisetata, 2005 (Molao wa 8 wa 2005);

“**palo e dumeletsweng e ka tlase**” e bolela peresente kapa lenane la basadi ba lokelang ho ba ho lekgotla la setso haeba ho ena le lenane le sa lekanang la seabo sa basadi ho ka etsa bonngwe borarong; le

“**Setho se kgethilweng**” e bolela lenane lohle la ditho tsa setjhaba sa setso tse etsang 40% ya ditho tsa lekgotla la setso.

### **Election of community members occupying forty percent (40%) membership of a Traditional Council**

2. (1) The election of traditional community members (forty percent of Traditional Council) as envisaged in section 7(2)(d) of the Free State Traditional Leadership and Governance Act, 2005 and regulation 3(1)(c) above, shall be by popular vote and a nominated candidate shall be requested to address pitso to demonstrate his/ her knowledge of the traditional community's history and practices and give reasons why he or she must be elected.
- (2) Persons who are elected to the Traditional Council must be resident in the area of jurisdiction where the Traditional Council is established.
- (3) Persons who are elected to the Traditional Council must be of a good character, demonstrate knowledge of values and norms, as well as customary practices that are central to the traditional community.
- (4) The names of all members who have been elected and approved must be submitted to the Premier within ten (10) working days of the date of election.

### **Selected and elected members of Traditional Council**

3. The Premier must by proclamation in the *Provincial Gazette*, publish the names of selected and elected members of the traditional council.

### **Meetings of a traditional council**

4. (1) Senior traditional leader chairs meetings of a traditional council and in his absence, a headman or headwoman or a member of the royal family may preside over a meeting.
- (2) Decisions of a traditional council are by way of consensus and if consensus is not achieved, members must vote and if the majority vote in favour of the decision or proposal, it will be the decision of the traditional council.
- (3) Quorum of a meeting of a traditional council is 50% plus one of the members present.
- (4) The chairperson has casting and deliberative vote.

### **Committees of Traditional Council**

5. (1) A traditional council may establish a committee which may perform functions assigned to it by a traditional council.
- (2) A traditional council may dissolve or reconstitute the committees that are established in terms of subsection (1).



**Kgetho ya ditho tsa setjhaba tse nkang diperesente tse mashome a mane (40%) tsa botho ba Lekgotla la Setso**

2. (1) Kgetho ya ditho tsa setjhaba sa setso (diperesente tse mashome a mane tsa Lekgotla la Setso) jwaloka ha ho lebeleletse ho karolo ya 7(2)(d) ya Molao wa Puso le Boetapele ba Setso wa Foreisetata, 2005 le molawana wa 3(1)(c) ka hodimo mona, e tla ba ka vouto ya thatohatsi mme nkgetheng ya thontsweng o tla kotjwa ho fana ka puo pitsong ho bontsha tsebo ya hae ya nalane le ditlwaelo tsa setjhaba sa setso mme a fane ka mabaka a hore ke hobaneng a lokela ho kgethwa.
- (2) Batho ba kgethuweng ho ba Lekgotleng la Setso ba lokela hore ebe badudi ba sebaka seo Lekgotla la Setso le thehilweng ho sona.
- (3) Batho ba kgethilweng ho Lekgotla la Setso ba lokela ho ba le botho bo hlomphehang, ba bontshe tsebo ya makgabane le ditlwaelo, esitana le diketso tsa meetlo tse leng bohlokwa setjhabeng sa setso.
- (4) Mabitso a ditho tsohle tse kgethilweng le ho ananelwa a lokela ho romelwa ho (Tonakgolo) matsatsing a leshome (10) a mosebetsi ho tloha letsatsing la dikgetho.

**Ditho tse thonngweng le tse kgethilweng tsa Lekgotla la Setso**

3. Moporemia o lokela hore ka tsebiso ya setjhaba ho (*Koranta ya Mmuso wa Provense (Provincial Gazette)*), a phatlalatse mabitso a ditho tse thontsweng le tse kgethilweng tsa lekgotla la setso.

**Dikopano tsa lekgotla la setso**

4. (1) Moetapele wa setso wa sehlooho o ba modulasetulo wa dikopano tsa lekgotla la setso mme ha a le siyo, monna kapa mosadi wa moetapele kapa setho sa ntlo ya borena e kaba yena ya bang modulasetulo kopanong.
- (2) Diqeto tsa lekgotla la setso di etswa ka tumellano ya bohle mme haeba ho sa fihlelwa tumellano eo, ditho di lokela ho vouta mme haeba bongata bo voutela qeto eo kapa tlhahiso eo, hoo e tla ba qeto ya lekgotla la setso.
- (3) Khoramo ya kopano ya lekgotla la setso ke 50% kopanya nngwe ho ditho tse teng.
- (4) Moetapele o na le vouto ya kgetho le ya maikemisetso (deliberative vote).

**Dikomiti tsa Lekgotla la Setso**

5. (1) Lekgotla la setso le ka theha komiti e ka phethang mesebetsi eo e e neilweng ke Lekgotla la setso.
- (2) Lekgotla la setso le ka qhaqha kapa ho aha botjha dikomiti tse theilweng ho ya ka karolwana ya (1).

### Termination of office of members of a traditional council

6. Save for reasons or considerations set out in section 7(6)(b)(i)-(iv) and subject to the provisions of section 29 and the Code of Conduct, membership of a member of a traditional council may be terminated if –
- (a) a member absents himself or herself from three (3) consecutive meetings without written apology;
  - (b) a member is declared insolvent and he or she is not rehabilitated;
  - (c) a member is convicted and sent to prison without an option of a fine; and
  - (d) due process that is set out in section 29 for termination of membership or removal from office must be followed.

### Dissolution of a traditional council

7. (1) The Premier may dissolve a traditional council if –
- (a) a report is submitted by the chairperson of a traditional council recommending a dissolution of a traditional council due to –
    - (i) continuous infighting among the members of a traditional council;
    - (ii) mismanagement of funds of a traditional council;
    - (iii) irreconcilable differences between members of a traditional council;
  - (b) a traditional council fails to carry out its function properly despite remedial steps taken to assist a traditional council;
  - (c) on good cause shown and on reasonable and compelling grounds exist for a dissolution of a traditional council.
- (2) All powers and functions, duties, assets and responsibilities of a dissolved traditional council shall vest with a senior traditional leader.
- (3) If a senior traditional leader was involved in the activities that led to the dissolution of a traditional council, the Premier shall, by notice in the *Provincial Gazette*, establish an interim committee that will carry out the functions, duties and responsibilities of a traditional council until a traditional council is reconstituted in terms of the provisions of the Act.



**Ho fediswa ha nako ya tshebetso ya ditho tsa lekgotla la setso**

6. Bakeng sa mabaka kapa ditshekatsheko tse hlalositsweng ho karolo ya 7(6)(b)(i)-(iv) le ho ya dipheho tsa karolo ya 29 le Khouto ya Boitshwara, botho ba setho sa Lekgotla la setso bo ka fediswa haeba –
- (a) setho se ka ba siyo dikopanong tse latelanang tse tharo (3) ntle le kopo ya tshwarelo e ngotsweng;
  - (b) Setho se itlalehile se felletswe ke tjehelele mme a ke ke a fetolwa;
  - (c) Setho se ahlotswa mme sa romelwa tjhankaneng ntle le kgetho ya faene(kotlo ya tefiso ya tjehelele); mme
  - (d) mokgwatsamaiso o lokelang o hlalositsweng ho karolo ya 29 bakeng sa phediso ya botho kapa ho tloswa boemong ba hao lekgotleng o lokela ho latelwa.

**Ho qhalwa/fediswa Lekgotla la setso**

7. (1) Tonakgolo a ka qhala Lekgotla la setso haeba –
- (a) tlaleho e rometswe ke modulasetulo wa Lekgotla la setso a etsa tlhahiso ya ho qhala Lekgotla la setso ka lebaka la –
    - (i) dintwa tse sa feleng tsa ditho ka hara Lekgotla la setso;
    - (ii) tshwara e bohlaswa ya matlole a Lekgotla la setso;
    - (iii) diphapang tse ke keng tsa lokiswa pakeng tsa ditho tsa Lekgotla la setso;
  - (b) Lekgotla la setso le hloleha ho phetha mosebetsi wa lona ka nepo le ha ho nkilwe mehato ya tokiso ho leka ho thusa Lekgotla la setso;
  - (c) ho bontshitswe lebaka le lokileng mme mabaka a utlwahalang a tlamang a le teng bakeng sa ho qhalwa ha Lekgotla la setso.
- (2) Matla ohle le mesebetsi yohle, ditshebetso, thepa le maikarabelo ohle a lekgotla la setso le qhadilweng a tla sala le moetapele wa setso ya ka sehloohong.
- (3) Haeba moetapele wa setso ya ka sehloohong a ne a ena le seabo diketsahalang tse lebisitsweng ho qhalweng ha Lekgotla la setso, Tonakgolo o tla, ka tsebiso ho *Koranta ya Mmuso*, theha komiti ya nakwana e tla phetha mesebetsi, ditshebetso le maikarabelo a Lekgotla la setso ho fihlela Lekgotla la setso le hlongwa hape ho ya ka dipheho tsa Molao.

**Delayed establishment of a traditional council**

8. If there are circumstances or reasons that cause a delay in the establishment of a traditional council and which result in the term of office of a traditional council being not properly linked with the term of office of the National House of Traditional Leaders –
- (a) the term of office of a traditional council shall be from the date on which it was established until the remaining term of office of the National House of Traditional Leaders;
  - (b) the term of office of a traditional council that is affected by the factors set out above, will come to an end on the expiry of the term of office of the National House of Traditional Leaders, irrespective when the term of office of the latter has commenced.

**Short title**

9. These Regulations are called the Free State Traditional Leadership and Governance Reconstitution of Traditional Councils Regulations, 2013.

**Ho thehwa ho diehiswang ha Lekgotla la setso**

8. Haeba ho ena le maemo kapa mabaka a itseng a bakang tiehiso bakeng sa ho thehwa ha Lekgotla la setso mme a qetellang a baka hore nako ya tshebetso ya Lekgotla la setso e se amahanngwe ka nepo le nako ya tshebetso ya Ntlo ya Naha ya Baetapele ba Setso –
- (a) nako ya tshebetso ya Lekgotla la setso e tla ba ho tloha ka letsatsi leo le thehilweng ka lona ho fihlela nako e setseng ya tshebetso ya Ntlo ya Naha ya Baetapele ba Setso;
  - (b) nako ya tshebetso ya Lekgotla la setso e anngweng ke dintlha tse beilweng ka hodimo mona, e tla fihla pheletsong ha nako ya tshebetso ya Ntlo ya Naha ya Baetapele ba Setso, ho sa kgathalletsehe hore nako ya tshebetso ya Ntlo ya Naha ya Baetapele ba Setso e qadile neng.

**Sehlooho se sekgutshwane**

9. Melawana ena e bitswa Melawana ya Boetapele ba Setso le ho Thehwa botjha ha Puso ya Makgotla a Setso Foreisetata, 2013.

**PROVINCIAL GAZETTE**  
(Published every Friday)

All correspondence, advertisements, etc. must be addressed to the Officer in charge of the Provincial Gazette, P.O. Box 517, Bloemfontein, Tel.: (051) 403 3139. Free Voucher copies of the Provincial Gazette or cuttings of advertisements are NOT supplied.

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You are hereby informed that the numbering of the Provincial Gazette /Tender Bulletin and notice numbers will from 2010 coincide with the relevant financial year. In other words, the chronological numbering starting from one will commence on or after 1 April of every year.

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**PROVINSIALE KOERANT**  
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U word hiermee in kennis gestel dat die nommering van die Provinsiale Koerant / Tender Bulletin en kennisgewingnummers vanaf 2010 met die betrokke boekjaar sal ooreenstem. Met ander woorde, die kronologiese nommering beginnende met een, sal op of na 1 April van elke jaar begin.

Gedruk en uitgegee deur die Vrystaatse Provinsiale Regering