



**CONSTITUTION
OF THE
KWAZULU-NATAL PROVINCIAL COUNCIL ON AIDS**

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PREAMBLE

Recognising the need for a provincial structure which will –

- guide and facilitate the implementation of the National HIV and AIDS and STI Strategic Plan and other related matters;
- facilitate, monitor and evaluate the protection, promotion and fulfillment of the rights of the affected and infected persons living with HIV and AIDS in the Province;
- promote HIV and AIDS awareness in the Province;
- promote a uniform approach and cooperation by all organs of state in the provincial and local spheres in respect of any matter relating to HIV and AIDS;
- advise the Government on HIV and AIDS and related matters;
- monitor and coordinate implementation programmes and strategies of the provincial multi-sectoral response to the epidemic;
- ensure periodic review of the Province's HIV and AIDS strategic plan and other related matters;
- mobilize resources for the implementation of HIV and AIDS programmes and strategies in the Province at community level;
- recommend appropriate research around HIV and AIDS; and
- report to the South African National AIDS Council

The Honourable Premier of KwaZulu-Natal hereby establishes the KwaZulu-Natal Provincial Council on AIDS;

WE HEREBY commit ourselves to serve and uphold these values and principles in providing professional, non-partisan services and advice in relation to HIV and AIDS;

NOW, THEREFORE, in dedication to the above commitment by the Premier, **WE, THE**

MEMBERS OF THE KZN PROVINCIAL COUNCIL ON AIDS, COMMIT OURSELVES TO UPHOLDING AND PROMOTING THE AIMS AND OBJECTIVES OF THIS COUNCIL in accordance with the provisions of this **CONSTITUTION**;

Name of Council

1. The name of the Council is the KwaZulu-Natal Provincial Council on AIDS (“Council”).

Status of Council

2. (1) The Council has juristic personality, and is–

- (a) an independent voluntary association;
- (b) a body corporate with perpetual succession;
- (c) capable of entering into contractual and other relations; and
- (d) capable of suing and of being sued in its own name.

(2) The Council may hold property apart from its members.

(3) Members of the Council are not personally liable for any liabilities of the Council.

Definitions

3. In this Constitution, unless the context indicates otherwise –

"AIDS organisation" includes –

- (a) a community-based AIDS organisation;
- (b) a faith-based AIDS organisation; and
- (c) a non-governmental AIDS organisation.

"community-based organisation" means a community-based organisation that operates an HIV and AIDS programme or programmes.

"Department" means the department in the Provincial Government of KwaZulu-Natal responsible for HIV and AIDS;

"faith-based organisation" means a religious body that operates an HIV and AIDS programme or programmes.

"non-governmental organisation" means –

- (a) a voluntary association;
- (b) a company;
- (c) a body corporate;
- (d) a trust; or
- (e) other organisation in civil society,
that operates an HIV and AIDS programme or programmes.

"Premier" means the Premier of the Province of KwaZulu-Natal as contemplated in section 125 of the Constitution;

"Province" means the Province of KwaZulu-Natal, and **"provincial"** has a corresponding meaning;

"Provincial Legislature" means the Legislature of the Province of KwaZulu-Natal;

Strategic functions and objectives of Council

4. The functions and objectives of the Council are to –

- (a) guide and facilitate the implementation in the Province of the National HIV and AIDS strategic plan and other related matters;
- (b) facilitate, monitor and evaluate the protection, promotion and fulfillment of the rights of the affected and infected persons living with HIV and AIDS in the Province;
- (c) advocate for intensified HIV and AIDS awareness in the Province;
- (d) promote a uniform approach and cooperation by all organs of state in the provincial and local spheres in respect of any matter relating to HIV and AIDS;
- (e) advise the Government on HIV and AIDS and related matters;
- (f) monitor, evaluate and coordinate implementation programmes and strategies of the provincial multi-sectoral response to the epidemic;
- (g) ensure periodic review of the Province's HIV & AIDS and STI Strategic Plan and other related matters;
- (h) mobilize resources for the implementation of HIV and AIDS programmes and strategies in the Province at community level;

- (i) recommend appropriate research around HIV and AIDS;
- (j) report to the South African National AIDS Council; and
- (k) facilitate and monitor the establishment of Metro, District and Local AIDS councils.

Composition of Council and creation of Executive Committee

5.(1) The Council operates at the following levels of organisation–

- (a) the Council;
- (b) the Executive Committee; and
- (c) the Office Bearers, being the Chairperson, the Deputy Chairperson, and the Treasurer.

(2) The Council shall comprise of no more than sixty members consisting of the following persons –

- (a) the Premier;
- (b) Members of the Executive Council in the Province responsible for –
 - (i) Health;
 - (ii) Education;
 - (iii) Social Development;
 - (iv) Finance;
 - (v) Local Government;
 - (vi) Agriculture and Environmental Affairs;
 - (vii) Housing;
 - (viii) Transport; and
 - (ix) Arts and Culture
- (c) The Director –General of the Province;
- (d) Heads of Department for –
 - (i) Health;
 - (ii) Education;
 - (iii) Social Development;
 - (iv) Finance;
 - (v) Local Government;
 - (vi) Agriculture and Environmental Affairs;

- (vii) Housing;
 - (viii) Transport; and
 - (ix) Arts and Culture
- (e) Chairpersons of the –
- (i) Premier’s Portfolio Committee;
 - (ii) Health Portfolio Committee; and
 - (iii) Finance Portfolio Committee.
- (f) one representative nominated by the KwaZulu-Natal Local Government Association.
- (g) Chairpersons of each Metro and District AIDS Council established in the Province.
- (h) one representative nominated by the KwaZulu-Natal Youth Commission.
- (i) a regional representative of the National Department of Home Affairs.
- (j) a regional representative of the National Department of Labour.
- (k) one representative nominated by each of the following civil society sectors –
- (i) Non Governmental Organisation Sector;
 - (ii) Legal and Human Rights Sector;
 - (iii) Community-based organisation Sector;
 - (iv) Disability Sector;
 - (v) Faith Based Organisations;
 - (vi) Education/Academic Sector;
 - (vii) Children’s Sector;
 - (viii) Women’s Sector;
 - (ix) Men’s Sector;
 - (x) Labour Sector;
 - (xi) PLWHA Sector;
 - (xii) Business Sector;
 - (xiii) Sports Sector;
 - (xiv) Hospitality Sector;
 - (xv) Traditional Leadership Sector;
 - (xvi) Traditional Health Practitioner’s Sector;
 - (xvii) Youth Sector;
 - (xviii) Media;
 - (xix) Academic/Higher Education;

- (xx) Research;
- (xxi) Veterans;
- (xxii) People living on farms;
- (xxiii) Senior Citizens; and
- (xxiv) Refugees.

(3) Members of the Council contemplated in subclause (2)(k) must be appointed by the Premier after following the procedure set out in subclause (5), applying the principles of transparency and representivity, and taking into account any special competence, skill, knowledge, experience and interest in the fields of HIV and AIDS and the provision of HIV and AIDS related services.

(4) Members of the Council contemplated in subclauses (2)(a) to (2)(j) inclusive are *ex officio* members of the Council who shall have voting powers together with the other members.

(5) The Premier must –

- (a) in terms of a notice published in four newspapers of general circulation in different areas of the Province invite the civil society sectors contemplated in subclause (2)(k) to submit nominations, and for them to apply, within 30 days of publication of the invitation for appointment as members of the Council: Provided that the notice must contain the qualifications for membership of the Council referred to in clause 6;
- (b) establish an independent panel consisting of at least three persons to prepare, for consideration by the Premier, a shortlist of nominees as contemplated in subclause (2)(k) : Provided that the panel must, in preparing the shortlist, apply the principles of transparency and representivity having due regard to the provisions of subclause (3) and clause 6; and
- (c) subject to the provisions of subclause (3), appoint the required number of members, from the civil society sectors, from the shortlist as contemplated in paragraph (b).

(6) The Council must, as soon as possible after it has been constituted in terms of this clause, elect an Executive Committee consisting of no more than twelve

Council members or their nominees, who shall be equally represented by Government and Civil society, to carry out the operations of the Council.

Qualifications for appointment as member of the Council

6. A person appointed as a member of the Council as contemplated in clause 5(1)(j) must –

- (a) have special competence, skill, experience, knowledge, interest or academic expertise in, –
 - (i) HIV and AIDS related matters;
 - (ii) community development; or
 - (iii) the provision of health services;
- (b) be resident in the Province; and
- (c) have demonstrated commitment and interest in AIDS related matters.

Term of office, filling of vacancies and vacation of office

7.(1) Subject to the provisions of subclauses (6), (7) and (8), a member appointed as contemplated in subclause(5)(1)(k) holds office from the date of appointment for a period of three years.

(2) A member contemplated in subclause (1) whose term of office has expired is eligible for reappointment by the Premier for one additional term without following the procedure which led to the member's appointment.

(3) The Premier is the chairperson of the Council.

(4) The Council must, at its first meeting, elect a deputy-chairperson, who must be a civil society member, and treasurer from amongst its members.

(5) The Council must, at its first meeting, designate a secretariat comprising of one official from the KwaZulu-Natal Department of Health, one official from the Office of the Premier and three persons nominated from the civil society sectors contemplated in subclause(5)(1)(k), none of whom shall be members of the Council nor enjoy voting rights in either the Council or Executive Committee.

(6) The Premier may, after consultation with the Council, terminate a person's membership of the Council –

(a) if that member has been absent from three consecutive meetings of the Council without sufficient reason;

(b) on grounds of being unable to fulfil his or her obligations;

(c) on account of misconduct; or

(d) on the recommendation of the Council, for reasons which are fair and just, by a resolution adopted with a supporting vote of at least two-thirds of the members of the Council.

(7) A member of the Council vacates office, if –

(a) he or she no longer meets the qualifications for membership referred to in clause 6;

(b) he or she dies;

(c) he or she resigns by giving one months written notice to the Premier;

(d) he or she has served the prescribed period, and his or her term of office expires; or

(e) his or her membership of the Council has been terminated as contemplated in subclause (6);

(8) Any vacancy on the Council must be filled in the manner in which the member who vacates office was appointed, and any member so appointed must hold office for the unexpired portion of the period for which the member who vacates office was appointed.

Meetings of Council and Executive Committee

8.(1) The Premier must convene the first meeting of the Council.

(2) The Council must thereafter meet as often as necessary, but at least twice a year, at such places and times as the Council may determine.

(3) The Chairperson and deputy-chairperson must agree on the Agenda at least 21 days prior to such meeting.

(4) Any agenda items by the members must be submitted to the secretariat one month prior to such meeting.

(5) Reports on the status of the actions must be prepared and submitted to secretariat two weeks prior to such meeting.

(6) The Chairperson, the Deputy Chairperson and secretariat must hold a meeting to finalise the reports, which must then be circulated.

(7) Every member of the Council must be notified of each meeting in writing, at least 14 days prior to such meeting, and such notification must contain an agenda for the proposed meeting.

(8) In the absence from any meeting of the Council of both the chairperson and the deputy chairperson, the members present at that meeting may elect one from amongst themselves to preside at that meeting.

(9) A special meeting of the Council may be called at the request of –

(a) the chairperson; or

(b) two-thirds of the members of the Council by written petition,

whereupon the chairperson must, in writing, notify every member of the Council of the time and place of the special meeting.

(10) A *quorum* for a meeting of the Council is a majority of its members at the time.

(11) Any decision of the Council must be taken by resolution of the majority of the members present at any meeting of the Council and, in the event of an equality of votes on any matter, the member presiding at the meeting in question has a casting vote in addition to his or her deliberative vote as a member of the Council.

(12) The proceedings of all meetings of the Council must be duly recorded and minuted.

(13)(a) The minutes of the previous meeting must be read at the commencement of each meeting.

(b) The minutes may be regarded as read if copies thereof were furnished to the members of the Council prior to the meeting.

(c) The chairperson may only sign the minutes once objections or corrections have been dealt with.

(14)(a) The chairperson must decide on questions of order or procedure.

(b) If any member objects to any such decision, the question must be put to the vote and the decision of the majority of the members at the meeting is final and binding on the Council.

(15) A member of the Council must not vote or in any manner participate in the proceedings at any meeting of the Council, nor be present at the venue where such a meeting is held if, in relation to any matter before the Council, such a member has any interest which, reasonably considered, may preclude him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner.

(16) The secretariat must distribute action plans a week after each meeting of the Council.

(17) The secretariat must follow up on action items and ensure the distribution of minutes no later than two weeks after the meeting of the Council.

(18) The secretariat must coordinate the work of the Council and ensure that the administrative duties, as contemplated in clause 9, are carried out by the Office of the Premier.

(19) The Executive Committee must hold its first meeting within one month of it being appointed and must thereafter meet as often as necessary, but at least once every quarter, at such places and times as the Committee may determine.

(20) The Executive Committee must, at its first meeting, elect a chairperson and deputy-chairperson from amongst its members.

(21) A *quorum* for the Executive Committee is seven members thereof.

(22) Any decision of the Executive Committee must be taken by resolution of the majority of the members present at any meeting of the Executive Committee and, in the event of an equality of votes on any matter, the member presiding at the meeting in question has a casting vote in addition to his or her deliberative vote as a member of the Executive Committee.

(23) The proceedings of all meetings of the Executive Committee must be duly recorded and minuted.

(24)(a) The minutes of the previous meeting must be read at the commencement of each meeting.

(b) The minutes may be regarded as read if copies thereof were furnished to the members of the Executive Committee prior to the meeting.

(c) The chairperson may only sign the minutes once objections or corrections have been dealt with.

(25)(a) The chairperson must decide on questions of order or procedure.

(b) If any member objects to any such decision, the question must be put to the vote and the decision of the majority of the members at the meeting is final and binding on the Executive Committee.

(26) A member of the Executive Committee must not vote or in any manner participate in the proceedings at any meeting of the Executive Committee, nor be present at the venue where such a meeting is held if, in relation to any matter before the Executive Committee, such a member has any interest which, reasonably considered, may preclude him or her from performing his or her functions as a member of the Executive Committee in a fair, unbiased and proper manner.

(27) The secretariat must distribute action plans a week after each meeting of the Executive Committee.

(28) The secretariat must follow up on action items and ensure the distribution of minutes no later than two weeks after the meeting of the Executive Committee.

(29) The secretariat must coordinate the work of the Executive Committee and ensure that the administrative duties, as contemplated in clause 9, are carried out by the Office of the Premier.

Administrative work and operations of Council and Executive Committee

9.(1) The administrative work incidental to the performance of the functions of the Council and Executive Committee must be performed by the Office of the Premier.

(2) In carrying out the administrative work contemplated in subclause (1) the Office of the Premier shall be directed by the secretariat.

(2) Subject to direction from the Council, the Executive Committee is responsible for the day-to-day operation of the Council.

(3) The Executive Committee–

(a) must–

- (i) co-ordinate the activities and promote the interests of the Council and its members generally;
- (ii) report regularly to the Council;
- (iii) ensure that all monies collected by the Council are properly receipted, deposited and administered; and
- (iv) decide all matters of procedure on which this Constitution is silent; and

(b) may–

- (i) for the purpose of maintaining discipline–
 - (aa) reprimand members;
 - (bb) recommend disciplinary action by the Council; or
 - (cc) itself institute disciplinary action;
- (ii) subject to authorisation by resolution of the Council, acquire by purchase, lease or otherwise, or dispose of, any property or hold same on behalf of the Council: Provided that any agreement or contract to which the Council is a

party or signatory to give effect to such purchase, lease, disposal or holding must be signed by the Chairperson of the Council and must contain, as a schedule to the agreement or contract, a copy of a dated resolution by the Council signed by all the Office Bearers authorising the Chairperson to sign the agreement or contract in question;

(iii) open, operate and close banking accounts on behalf of the Council and, generally, control, manage and administer the funds and finances of the Council;

(iv) borrow, raise or invest monies and funds, allocate funds and approve all expenditure on behalf of the Council;

(v) subject to authorisation by resolution of the Council, conclude any agreement it deems necessary or appropriate: Provided that any agreement or contract to which the Council is a party or signatory must be signed by the Chairperson and must contain, as a schedule to the agreement or contract, a copy of a dated resolution by the Council signed by all the Office Bearers authorising the Chairperson to sign the agreement or contract in question;

(vi) institute or defend legal proceedings by or against the Council, or any of its members; and

(vii) do such other things as in the opinion of the Executive Committee or the Council appears to be in the interests of the Council and which are consistent with the provisions of this Constitution.

Powers, duties and functions of Council

10.(1) The Council must –

(a) advise the Cabinet on –

(i) any proposed HIV and AIDS policy in the Province;

(ii) achieving operational uniformity of HIV and AIDS programmes in the Province; and

(iii) any matter related to HIV and AIDS and the provision of AIDS services in relation to which the Cabinet requests advice;

(b) assist the Department in communicating decisions and relevant information on HIV and AIDS in the Province to departments in the Provincial Government, municipalities in the Province, the public and all other stakeholders in the Province

by means of meetings, workshops, notices, and other published and electronic media;

(c) liaise with national and provincial organisations concerned with HIV and AIDS related matters;

(d) not later than 30 days before the commencement of each financial year, submit a business plan to Cabinet containing such information as may be determined by Cabinet;

(e) perform any other function or duty contemplated in this Constitution; and

(f) report to the South African National AIDS Council.

(2) The Council may –

(a) exercise any power conferred by this Constitution; and

(b) generally, do everything which is deemed necessary or expedient to achieve the objects of this Constitution and to perform the duties and functions referred to in subclause (1).

Committees of Council

11.(1)(a) Notwithstanding the provisions of subclauses (1)(b) and (1)(c) the Council must appoint standing committees, of a permanent nature, to implement the National and Provincial strategic plans on HIV and AIDS and to carry out the functions and objectives set out in clause 4 of this Constitution.

(b) The Council may appoint one or more technical committees, separate from the Executive Committee, not limited to its own members, who shall comprise both Government and civil society members, to assist it in the exercise of its powers and the performance of its duties and functions.

(c) When appointing a committee the Council shall prescribe the terms of reference of the committee and any time frames that may be appropriate.

(2)(a) A committee contemplated in subclause (1) must consist of at least five or more members of the Council, who shall not be exceeded by non Council members, and must perform such duties and functions of the Council as the Council may determine.

(b) The Council may, at any time, dissolve or reconstitute such a committee.

(3)(a) The Council may delegate any of its powers or assign any of its duties or functions to a committee appointed in terms of subclause (1).

(b) Any delegated or assigned power, duty or function so exercised or performed is regarded to have been exercised or performed by the Council.

(c) The Council is not absolved from exercising or performing any power, duty or function so delegated or assigned.

Remuneration of members of Council and reimbursement of expenses incurred by members of Council and committees of Council

12. A member of the Council, a member of a committee of the Council and a member of the secretariat may, in respect of his or her functions as a member, receive reimbursement for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Council or a committee of the Council.

(b) The Premier must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a).

Quarterly and annual reports

13.(1) The Council must annually submit a report on its activities, including an assessment of the extent to which its objects have been achieved, to the Cabinet and to the South African National AIDS Council.

(2) The Premier must cause the report to be tabled in the Provincial Legislature within 14 days after receipt thereof if the Provincial Legislature is then in ordinary session or, if the Provincial Legislature is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

(3) Within five months after the report has been tabled, a delegation consisting of the chairperson of the Council and at least two other members of the Council must brief the relevant Portfolio Committee on the annual report.

(4) The Executive Committee, as well as any other committee established in terms of clause 11 must submit a report on its activities, including an assessment of the extent to which its objects have been achieved, to the Council on a quarterly basis.

Finances and signing powers of Council

14.(1) The funds of the Council consist of all monies received or raised by means of donations for the running of the Council and its campaigns or projects.

(2) All cheques and financial documentation requiring signature on behalf of the Council must be signed by at least two signatories who shall be either the Chairperson or Deputy Chairperson and the Treasurer.

(3) Any agreement or contract to which the Council is a party or signatory must—
(a) be signed by the Chairperson; and
(b) contain, as a schedule to the agreement or contract, a copy of a dated resolution by the Council.

(4) Any official correspondence on behalf of the Council addressed to any person or body must be signed by either the Chairperson, or the Deputy-Chairperson.

(5) The Treasurer must—
(a) keep proper books of account;
(b) ensure that the books of account are audited annually by auditors approved by the Executive Committee;
(c) inspect all records relating to the finances and books of account of the Council; and
(d) submit statements of income and expenditure of the accounts of the Council to each meeting of the Executive Committee and in respect of each financial year to the Annual General Meeting of the Council.

(6) Apart from the duties already outlined, the secretariat—
(a) attends to the publication and dissemination of information pertaining to the affairs of the Council and Executive Committee; and

(b) is responsible for the proper administration and co-ordination of the Council and Executive Committee, including the duty to–

- (i) perform such other duties as the Council or Executive Committee may direct;
- (ii) report fully to each meeting of the Council and the Executive Committee on all aspects of the activities of the Council and Executive Committee; and
- (iii) ensure that a register of Council, Executive Committee and all other committee members is established and maintained.

Notices

15. No meeting is invalid solely by reason of the non-receipt by any person entitled to receive the requisite notice.

Dissolution of Council

16. The Premier may dissolve the Council at any time by resolution supported by two-thirds of the members of the Council.

Amendment to Constitution of Council

17.(1) Any provision of this Constitution may be amended in any manner by resolution of the majority of members of the Council: Provided that–

- (a) written notice to that effect has been lodged with the Chairperson at least 30 days prior to the date of the next ensuing Council Meeting;
- (b) the Secretariat forthwith circulates the notice to all members; and
- (c) the written notice contemplated in (a) is included as an item on the agenda of the next ensuing Council Meeting.

(2) An amendment becomes effective upon a resolution to that effect being passed by the quorum present at such Council meeting.

ADOPTION OF CONSTITUTION OF COUNCIL

18. THIS CONSTITUTION IS HEREBY ADOPTED AT **PIETERMARITZBURG** ON THIS **11th** DAY OF **NOVEMBER 2008** BY THE UNDERSIGNED SIGNATORIES WHO ARE REGARDED AS THE **FOUNDER MEMBERS** OF THE **KWAZULU-NATAL PROVINCIAL COUNCIL ON AIDS (KPCA):**