

PROVINCE OF WESTERN CAPE

**WESTERN CAPE
WITNESSES BILL**

(As introduced)

(SPEAKER)

[B 6—2005]

PROVINSIE WES-KAAP

**WES-KAAPSE WETSONTWERP
OP GETUIES**

(Soos ingedien)

(SPEAKER)

[W 6—2005]

IPHONDO LENTSHONA KOLONI

**UMTHETHO OSAYILWAYO
WAMANGQINA WENTSHONA
KOLONI**

(Njengoko wazisiwe)

(USOMLOMO)

[B 6—2005]

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BILL

To regulate the summoning and examination of witnesses by the Provincial Parliament; and to provide for incidental matters.

BE IT ENACTED by the Provincial Parliament of the Province of the Western Cape, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**committee**” means a committee of the Provincial Parliament consisting of 5 members;
 - “**member**” means—
 - (a) a member of the Provincial Parliament; or
 - (b) a permanent delegate of the Province of the Western Cape to the National Council of Provinces; 10
 - “**Powers, Privileges and Immunities Act**” means the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (Act No. 4 of 2004), of the National Parliament;
 - “**Provincial Parliament**” means the Provincial Parliament of the Province of the Western Cape; 15
 - “**Secretary**” means the Secretary to the Provincial Parliament;
 - “**sheriff**” means a person appointed as sheriff in terms of section 2 of the Sheriffs Act 1986 (Act No. 90 of 1986), and includes an acting sheriff and a deputy sheriff;
 - “**Speaker**” means the Speaker of the Provincial Parliament;
 - “**Standing Rules**” means the rules made by the Provincial Parliament in terms of section 23(3)(b) of the Constitution of the Western Cape. 20

Summoning of witnesses

2. (1) A summons in terms of section 25(a) of the Constitution of the Western Cape to appear before the Provincial Parliament or a committee to give evidence or to produce documents must be issued by the Secretary on the instructions of— 25
 - (a) the Speaker; or
 - (b) the chairperson of the committee concerned, acting in accordance with a resolution of the committee and with the concurrence of the Speaker.
- (2) The summons must state—
 - (a) the name of the person summonsed; 30
 - (b) the name or designation of the person who must serve the summons;
 - (c) the time, place and venue at which the person summonsed is required to appear;
 - (d) the subject of the enquiry;
 - (e) the purpose for which the evidence of that person is required; and 35
 - (f) a description of the document, if any, which that person is required to produce.
- (3) The summons must be served by the sheriff, or by a person designated by the Secretary, by delivering a copy of the summons—
 - (a) to the person mentioned in the summons; or
 - (b) at that person’s usual or last known place of residence or of employment or 40 business, to a person apparently over the age of 18 years and apparently residing or employed there.

(4) A return by the person who served the summons that service thereof has been effected in accordance with subsection (3) is *prima facie* proof of the service.

(5) A person summonsed in terms of this section or requested by the Provincial Parliament or a committee to attend a meeting of the Parliament or committee, is entitled to be paid an amount for his or her expenses as approved by the Speaker in accordance with the Standing Rules. 5

Examination of witnesses

3. When the Provincial Parliament or a committee requires that anything be verified or otherwise ascertained by the oral examination of a witness, the person presiding at the enquiry may— 10

- (a) call upon and administer an oath to, or accept an affirmation from, any person present at the enquiry who was or could have been summonsed in terms of section 2; and
- (b) examine that person or request the person to produce any document in the person's possession or custody or under his or her control which may have a bearing on the subject of the enquiry, subject to any limitation provided for by or in terms of the Standing Rules with regard to the type of subject matter about which a witness may be questioned or the type of document that a witness may be requested to produce. 15

Privilege of witnesses 20

4. (1) Subject to subsection (2), the law regarding privilege as applicable to a witness summonsed to give evidence or to produce a document before the High Court of South Africa applies to the examination of a person in terms of section 3.

(2) A person who is being examined under oath or affirmation in terms of section 3 may be required to answer any question put to him or her in connection with the subject of the enquiry, and to produce any document that he or she is requested to produce, despite the fact that the answer or the document would incriminate him or her or would tend to expose him or her to criminal or civil proceedings, or damages. 25

(3) Evidence given under oath or affirmation by a person before the Provincial Parliament or a committee may not be used against that person in any court or place outside the Parliament, except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated in section 5(1)(c) or (2)(d) or (e). 30

Offences

5. (1) A person who— 35

- (a) has been duly summonsed in terms of section 2 and who fails, without sufficient cause—
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused from further attendance by the person presiding at the enquiry; 40
- (b) when called upon under section 3(a), refuses to be sworn in or to make an affirmation as a witness; or
- (c) fails, without sufficient cause—
 - (i) to answer fully and satisfactorily all questions lawfully put to him or her under section 3(b); or 45
 - (ii) to produce any document in his or her possession or custody or under his or her control which he or she has been required to produce under section 3(b),

commits an offence and is liable to a fine or to imprisonment for a period not exceeding 12 months or to both the fine and the imprisonment. 50

(2) A person who—

- (a) threatens or obstructs another person in respect of evidence to be given before the Provincial Parliament or a committee;
- (b) induces another person-
 - (i) to refrain from giving evidence to or producing a document before the Provincial Parliament or a committee; 55
 - (ii) to give false evidence before the Provincial Parliament or a committee;

- (c) assaults or penalises or threatens another person, or deprives that person of any benefit, on account of the giving or proposed giving of evidence before the Provincial Parliament or a committee;
 - (d) with intent to deceive the Provincial Parliament or a committee, produces to the Parliament or committee any false, untrue, fabricated or falsified document; or 5
 - (e) whether or not during examination under section 3, wilfully furnishes the Provincial Parliament or a committee with information, or makes a statement before it, which is false or misleading, 10
- commits an offence and is liable to a fine or to imprisonment for a period not exceeding two years or both the fine and imprisonment. 10
- (3) Subject to subsection (4), subsections (1) and (2) do not apply to members.
 - (4) A member who commits an act mentioned in subsection (1) or (2) is guilty of contempt of the Provincial Parliament as contemplated in section 13 of the Powers, Privileges and Immunities Act. 15

Repeal of legislation

6. Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Western Cape Law on the Powers and Privileges of the Provincial Legislature, 1995 (Law No. 3 of 1995), are repealed.

Short title

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- 7. This Act is called the Western Cape Witnesses Act, 2005.

**MEMORANDUM ON THE OBJECTS OF
THE WESTERN CAPE PROVINCIAL PARLIAMENT:
WITNESSES BILL, 2005**

1. The Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, 2004 (the national Act), gives effect to, amongst others, section 117(2) of the Constitution of the Republic of South Africa (the national Constitution), in terms of which national legislation may prescribe certain privileges and immunities of provincial legislatures.
2. Chapter 5 of the national Act deals with witnesses before a House or a committee. That Chapter does not apply to provinces since section 115(c) of the national Constitution requires this aspect to be dealt with in provincial legislation or the rules and orders of the respective provincial legislatures. Section 25(c) of the Constitution of the Western Cape provides the same for this Province.
3. The main object of the Bill is to give effect to section 115(c) of the national Constitution and section 25(c) of the Constitution of the Western Cape. It is worded in line with Chapter 5 of the national Act.
4. In summary the Bill provides as follows:
 - Clause 1** contains definitions.
 - Clause 2** prescribes the procedure for the summoning of witnesses to appear before the Provincial Parliament or a committee of the Parliament.
 - Clause 3** regulates the examination of witnesses by the Provincial Parliament and its committees.
 - Clause 4** provides that witnesses are entitled to the same privileges as witnesses before the High Court of South Africa. However, a witness may not refuse to answer a question on the ground that it would be self-incriminatory.
 - Clause 5** creates a range of criminal offences in connection with witnesses and the giving of evidence before the Provincial Parliament and its committees. The offences are not applicable to Members of the Provincial Parliament. Provision is made that a Member who contravenes this section could be dealt with by the Parliament on a charge of contempt.
 - Clause 6** seeks to repeal the whole of the Western Cape Law on the Powers and Privileges of the Provincial Legislature, 1995 (Act No 3 of 1995), except Chapter 3A, sections 1 and 29. That Chapter deals with financial arrangements and staff matters, and should remain on the statute book until those matters have been covered elsewhere in legislation.
 - Clause 7** contains the short title.
5. The Bill does not have any additional financial implications for the Provincial Parliament.

WETSONTWERP

Om die dagvaarding en ondervraging van getuies deur die Provinsiale Parlement te reël; en om vir bykomstige aangeleenthede voorsiening te maak.

DAAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - “**balju**” iemand wat ingevolge artikel 2 van die Wet op Balju’s, 1986 (Wet No. 90 van 1986), as balju aangestel is, met inbegrip van ’n waarnemende balju en ’n adjunk-balju; 5
 - “**komitee**” ’n komitee van die Provinsiale Parlement wat uit lede bestaan;
 - “**lid**”
 - (a) ’n lid van die Provinsiale Parlement; of 10
 - (b) ’n vaste afgevaardigde van die Provinsie na die Nasionale Raad van Provinsies;
 - “**Provinsiale Parlement**” die Provinsiale Parlement van die Wes-Kaap Provinsie;
 - “**Sekretaris**” die Sekretaris van die Provinsiale Parlement;
 - “**Speaker**” die Speaker van die Provinsiale Parlement; 15
 - “**Staaude Reëls**” die reëls gemaak deur die Provinsiale Parlement ingevolge artikel 23(3)(b) van die Grondwet van die Wes-Kaap;
 - “**Wet op Bevoegdhede, Voorregte en Immunitete**” die Wet op die Bevoegdhede, Voorregte en Immunitete van die Parlement en Provinsiale Wetgewers, 2004 (Wet No. 4 van 2004), van die Nasionale Parlement. 20

Dagvaarding van getuies

2. (1) ’n Dagvaarding ingevolge artikel 25(a) die Grondwet van die Wes-Kaap om voor die Provinsiale Parlement of ’n komitee te verskyn om getuienis af te lê of om dokumente voor te lê, moet deur die Sekretaris uitgereik word in opdrag van—
 - (a) die Speaker; of 25
 - (b) die voorsitter van die betrokke komitee, wat moet optree ooreenkomstig ’n besluit van die komitee en met die instemming van die Speaker.
- (2) Die volgende moet in die dagvaarding verstrek word, naamlik—
 - (a) die naam van die persoon wat gedagvaar word;
 - (b) die naam of ampsbenaming van die persoon wat die dagvaarding moet 30 beteken;
 - (c) die tyd, plek en lokaal waar die gedagvaarde persoon moet verskyn;
 - (d) die onderwerp van die ondersoek;
 - (e) die doel waarvoor die getuienis van daardie persoon vereis word; en
 - (f) ’n beskrywing van die dokument, as daar is, wat die persoon moet voorlê. 35
- (3) Die dagvaarding moet beteken word deur die balju, of deur ’n persoon wat deur die Sekretaris aangewys is, deur ’n afskrif van die dagvaarding te oorhandig—
 - (a) aan die persoon in die dagvaarding vermeld; of
 - (b) by daardie persoon se gewone of laaste bekende woonplek of werkplek of besigheidsplek, aan iemand wat klaarblyklik ouer as 18 jaar is en klaarblyklik 40 daar woon of werk.

(4) 'n Relas deur die persoon wat die dagvaarding beteken het dat die betekening daarvan ooreenkomstig subartikel (3) gedoen is, is *prima facie* bewys dat dit aldus beteken is.

(5) Iemand wat ingevolge hierdie artikel gedagvaar word of wat deur die Provinsiale Parlement of 'n komitee versoek word om 'n vergadering van die Parlement of komitee by te woon, is geregtig op betaling van 'n bedrag vir sy of haar koste, soos deur die Speaker ooreenkomstig die Staande Reëls goedgekeur. 5

Ondervraging van getuies

3. Wanneer die Provinsiale Parlement of 'n komitee vereis dat enigiets deur die mondelinge ondervraging van 'n getuie bevestig of andersins vasgestel word, kan die voorsittende beampte by die ondersoek— 10

- (a) die eed oplê aan, of 'n plegtige verklaring aanvaar van, enigiemand wat by die ondersoek aanwesig is en wat ingevolge artikel 2 gedagvaar is of kon word; en
- (b) daardie persoon ondervra, of versoek dat die persoon enige dokument voorlê wat in die persoon se besit of onder sy of haar sorg of beheer is en wat moontlik verband kan hou met die onderwerp van die ondersoek, behoudens enige beperking bepaal deur of ingevolge die Staande Reëls aangaande die soort aangeleentheid waarvoor 'n getuie ondervra kan word of die soort dokument wat 'n getuie versoek kan word om voor te lê. 15

Privilegie van getuies 20

4. (1) Behoudens subartikel (2) is die reg met betrekking tot privilegie soos toepaslik op 'n getuie wat gedagvaar is om getuienis af te lê voor of om 'n dokument voor te lê aan die Hoë Hof van Suid-Afrika van toepassing op die ondervraging van 'n getuie ingevolge artikel 3.

(2) Daar kan van 'n persoon wat ingevolge artikel 3 onder eed of bevestiging ondervra word, vereis word om enige vraag wat in verband met die onderwerp van die ondersoek aan hom of haar gestel word te beantwoord, en om enige dokument voor te lê wat hy of sy versoek word om voor te lê, ondanks die feit dat die antwoord of die dokument hom of haar sou inkrimineer of hom of haar moontlik sou blootstel aan strafregtelike of siviele verrigtinge of skadevergoeding. 25 30

(3) Getuienis wat 'n persoon onder eed of bevestiging voor die Provinsiale Parlement of 'n komitee afgelê het, mag nie teen daardie persoon gebruik word in enige hof of plek buite die Parlement nie, behalwe in strafregtelike verrigtinge waar die betrokke persoon teregstaan op 'n aanklag van meened of 'n aanklag beoog in artikel 5(1)(c) of (2)(d) of (e). 35

Misdrywe

5. (1) Iemand wat—

- (a) behoorlik gedagvaar is ingevolge artikel 2 en wat, sonder voldoende rede, versuim— 40
 - (i) om te verskyn op die tyd en plek in die dagvaarding bepaal; of
 - (ii) om aanwesig te bly totdat hy of sy deur die persoon wat by die ondersoek voorsit van verdere bywoning onthef word;
- (b) wanneer kragtens artikel 3(a) daartoe gelas, weier om as getuie beëdig te word of 'n plegtige verklaring as getuie af te lê; of
- (c) sonder voldoende rede versuim— 45
 - (i) om volledig en bevredigend te antwoord op alle vrae wat regmatig aan hom of haar gestel word ingevolge artikel 3(b); of
 - (ii) om 'n dokument in sy of haar besit of onder sy of haar sorg of beheer voor te lê wanneer kragtens artikel 3(b), van hom of haar vereis word om dit te doen, 50

pleeg 'n misdryf en is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande, of met beide die boete en die gevangenisstraf.

(2) Iemand wat—

- (a) iemand anders dreig of belemmer ten opsigte van getuienis wat voor die Provinsiale Parlement of 'n komitee gelewer staan te word; 55
- (b) iemand anders oorreed om—

- (i) nie getuienis af te lê voor of 'n dokument voor te lê aan die Provinsiale Parlement of 'n komitee nie; of
- (ii) vals getuienis voor die Provinsiale Parlement of 'n komitee af te lê;
- (c) iemand anders aanrand, bestraf of dreig of enige voordeel ontsê weens die lewering of voorgenome lewering van getuienis voor die Provinsiale Parlement of 'n komitee; 5
- (d) met die doel om die Provinsiale Parlement of 'n komitee te bedrieg, enige vals, onwaar, versinde of vervalste dokument aan die Parlement of komitee voorlê; of
- (e) hetsy tydens ondervraging kragtens artikel 3 al dan nie, opsetlik inligting aan die Provinsiale Parlement of aan 'n komitee verstrek, of 'n verklaring daarvoor doen, wat vals of misleidend is, 10
pleeg 'n misdryf en is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar, of met beide die boete en die gevangenisstraf.
- (3) Behoudens subartikel (4) is subartikels (1) en (2) nie op lede van toepassing nie. 15
- (4) 'n Lid wat 'n handeling verrig wat in subartikel (1) of (2) vermeld word, pleeg minagting van die Provinsiale Parlement soos bedoel in artikel 13 van die Wet op Bevoegdheede, Voorregte en Immunitete.

Herroeping van wetgewing

6. Artikels 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, en 28 van die Wes-Kaapse Wet op die Bevoegdheede, en Voorregte van die Provinsiale Wetgewer, 1995 (Wet No. 3 van 1995), word herroep. 20

Kort titel

7. Hierdie Wet staan bekend as die Wes-Kaapse Wet op Getuies, 2005.

**MEMORANDUM OOR DIE OOGMERKE VAN
DIE WETSONTWERP OP DIE WES-KAAPSE PARLEMENT:
GETUIES, 2005**

1. Die Wet op die Bevoegdhe, Voorregte en Immuniteite van die Parlement en Provinsiale Wetgewers, 2004 (die nasionale Wet), gee gevolg aan, onder andere, artikel 117(2) van die Grondwet van die Republiek van Suid-Afrika (die nasionale Grondwet), ingevolge waarvan sekere bevoegdhe en immuniteite van provinsiale wetgewers deur nasionale wetgewing voorgeskryf kan word.
2. Hoofstuk 5 van die nasionale Wet handel oor getuies voor 'n Huis of komitee. Daardie Hoofstuk is nie op provinsies van toepassing nie, aangesien artikel 115(c) van die nasionale Grondwet vereis dat dié aspek in provinsiale wetgewing of die reëls en orders van die onderskeie provinsiale wetgewers gereël word. Artikel 25(c) van die Wes-Kaapse Grondwet bepaal dieselfde met betrekking tot hierdie Provinsie.
3. Die belangrikste oogmerk van die Wetsontwerp is om gevolg te gee aan artikel 115(c) van die nasionale Grondwet en artikel 25(c) van die Grondwet van die Wes-Kaap. Die bewoording stem ooreen met dié van Hoofstuk 5 van die nasionale Wet.
4. Opsommenderwys, bepaal die Wetsontwerp soos volg:
 - Klousule 1** bevat woordomskrivings.
 - Klousule 2** skryf die prosedure voor vir die dagvaarding van getuies om voor die Provinsiale Parlement of 'n komitee van die Parlement te verskyn.
 - Klousule 3** reël die ondervraging van getuies deur die Provinsiale Parlement en komitees.
 - Klousule 4** bepaal dat getuies geregtig is op dieselfde privilegies as getuies voor die Hoë Hof van Suid-Afrika. 'n Getuie mag egter nie weier om 'n vraag te beantwoord op grond daarvan dat die antwoord hom of haar sou inkrimineer nie.
 - Klousule 5** skep verskeie strafregtelike misdrywe in verband met getuies en die aflê van getuienis voor die Provinsiale Parlement en komitees. Die misdrywe is nie op Lede van die Provinsiale Parlement van toepassing nie. Voorsiening word gemaak dat 'n Lid wat hierdie artikel oortree onderhewig is aan optrede deur die Parlement self op 'n aanklag van minagting.
 - Klousule 6** beoog die herroeping van die Wes-Kaapse Wet op die Bevoegdhe en Voorregte van die Provinsiale Wetgewer, 1995 (Wet No. 3 van 1995), uitgesonderd Hoofstuk 3A, artikels 1 en 29. Daardie Hoofstuk handel oor finansiële reëlins en personeelaangeleenthede en moet geldig bly totdat daardie aangeleenthede elders in wetgewing vervat word.
 - Klousule 7** bevat die kort titel.
5. Die Wetsontwerp het nie enige verdere finansiële implikasies vir die Provinsiale Parlement nie.

UMTHETHO OSAYILWAYO

Ukulawula ukuthunyelwa kwesamani nokuthawuziswa kwamangqina yiPalamente yePhondo; kwanokubonelela ngemiba ehamba kunye nawo.

UZA KWENZIWA UKUBA USEBENZE yiPalamente yePhondo leNtshona Koloni, ngolu hlobo—

Inkcaza

1. Kulo Mthetho, ngaphandle kokuba umxholo ubonisa enye into—
 - “**ikomiti**” ithetha ikomiti yePalamente yePhondo eyenziwa ngamalungu; 5
 - “**ilungu**” lithetha—
 - (a) ilungu lePalamente yePhondo; okanye
 - (b) umthunywa osisigxina wephondo leNtshona Koloni kwiBhunga leSizwe laMaphondo;
 - “**UMthetho waMagunya naMalungelo aWodwa**” uthetha uMthetho waMalungelo wodwa ePalamente neziNdlu zoWiso-mthetho zaMaphondo, 2004 (uMthetho No 4 ka-2004) wePalamente kaZwelonke;
 - “**IPalamente yePhondo**” ithetha iPalamente yePhondo ekwiphondo leNtshona Koloni;
 - “**UNobhala**” uthetha uNobhala wePalamente yePhondo; 15
 - “**unothimba**” uthetha umntu otyunjwe njengonothimba ngokwecandelo 2 loMthetho wooNothimba wango-1986 (UMthetho Nomb. 90 ka-1986), yaye ubandakanya unothimba obambeleyo okanye olisekela;
 - “**USomlomo**” uthetha uSomlomo wePalamente yePhondo.
 - “**IMithetho eSisigxina**” ithetha imithetho eyenziwe yiPalamente yePhondo ngokwemigaqo yecandelo 23(3)(b) yoMgaqo-siseko weNtshona Koloni; 20

Ukuthunyelwa iisamani kwamangqina

2. (1) Isamani, ngokwecandelo 25(c) loMgaqo-siseko weNtshona Koloni, yokuba umntu makavele phambi kwePalamente yePhondo okanye kwekomiti ukuza kunika ubungqina okanye azise amaxwebhu, ikhutshwa nguNobhala phantsi kwemiyalelo— 25
 - (a) kaSomlomo; okanye
 - (b) usihlalo wekomiti echaphazelekayo, esebenza ngokwemigaqo yesigqibo sekomiti kwakunye nemvume kaSomlomo.
- (2) Isamani mayichaze—
 - (a) igama lomntu othunyelwe isamani; 30
 - (b) igama okanye isikhundla somntu omakahambise isamani;
 - (c) ixesha, indawo apho lowo uthunyelwe isamani ekufuneka avele kuyo;
 - (d) umba wophando;
 - (e) injongo ubungqina balo mntu ebufunelwa yona; kunye
 - (f) nekcazelo yoxwebhu, ukuba lukho, ekufuneka loo mntu aluvelise. 35
- (3) Isamani mayihanjiswe ngunothimba okanye ngumntu oyalelwe nguNobhala, ngokusa ikopi yesamani—
 - (a) kumntu okhankanywe kwisamani; okanye
 - (b) kwindawo yokuhlala yesiqhelo okanye yokugqibela eyaziwayo okanye eyengqesho okanye eyeshishini yaloo mntu, kumntu ekucacayo ukuba ungaphezu kweminyaka eli-18 nekucacayo ukuba uhlala okanye uqeshwe apho. 40

(4) Into echazayo eza naloo mntu ebehambise isamani okanye umsila wengwe exela ukuba lo msebenzi uqhutywe ngokuhambelana necandelwana (3) ebubungqina obubambekayo balo msebenzi.

(5) Umntu othunyelwe umsila wengwe ngokwemigaqo yeli candelo okanye ocelwe yiPalamente yePhondo okanye ikomiti ukuba azimase intlanganiso yeNdlu yoWisomthetho okanye yekomiti, unelungelo lokuba ahlawulwe isixamali seendleko zakhe njengoko oku kuvunyiwe nguSomlomo ngokuhambelana neMithetho eSisigxina. 5

Ukuthawuziswa (ukubuzwa) kwamangqina

3. Xa iNdlu yoWisomthetho yePhondo okanye ikomiti ifuna ukuba into ethile ingqinisiswe okanye mhlawumbi iqinisekise ngokuthawuziswa kwengqina, umntu owongamele olo phando— 10

- (a) angabiza okanye afungise, okanye amkele isingqinisiso kuye nakubani na okhoyo kumanyelo lophando othe wathunyelwa isamani ngokwecandelo 2; okanye
- (b) angavavanywa loo mntu okanye acele umntu lowo ukuba avelise naluphi na uxwebhu olukuye okanye oluselugcinweni okanye oluphantsi kolawulo lwakhe olunganento yokwenza nombamba wophando, kuxhomekeka kumlinganiselo obonelelwa yiMithetho eSisigxina malunga nodidi lombamba wesihloko ingqina elinokubuzwa ngawo okanye udidi loxwebhu ingqina elinokucelwa ukuba liluvelise. 15 20

Ilungelo elilodwa lamangqina

4. (1) Ngokuxhomekeke kwicandelwana (2), umthetho omalunga nelungelo elilodwa wengqina elithunyelwe umsila wengwe ukuba lize kunika ubungqina okanye livelise uxwebhu phambi kweNkundla ePhakamileyo yoMzantsi Afrika uyasetyenziswa xa kubuzwa ingqina elo kulandelwa ngokwemigaqo yecandelo 3. 25

(2) Umntu othawuziswayo phantsi kwesifungo okanye isingqinisiso ngokwemigaqo yecandelo 3 angacelwa ukuba aphenyule nawuphi na umbuzo obhekiswe kuye mayela nombamba wesihloko, kwaye avelise naluphi na uxwebhu athe wacelwa ukuba aluvelise phantsi kwaloo mthetho, nangona impendulo okanye uxwebhu lusenkumfaka etyaleni okanye lumenze amangalelwe ngokusemthethweni okanye asiwe kwinkundla yemidliwo, okanye ahlawuliswe ngenxa yomonakalo. 30

(3) Ubungqina obunikezelwe ngumntu phantsi kwesifungo okanye isingqinisiso phambi kweNdlu yoWisomthetho yePhondo okanye ikomiti abunakho ukusetyenziswa ngakuloo mntu kuyo nakuiyphi na inkundla yomthetho okanye indawo engaphandle kweNdlu yoWisomthetho, ngaphandle kwenkqubo yilwaphulomthetho apho loo mntu uchaphazelekayo exoxa ityala lokuxoka phantsi kwesifungo okanye ityala elicingeleka kwicandelo 5(1)(c) okanye (2)(d) okanye (e). 35

Amatyala

5. (1) Umntu—

- (a) othe wathunyelwa umsila wengwe ngokwemigaqo yecandelo 2 kwaye ongaphumeleliyo ngaphandle kwesizathu esanelisayo— 40
 - (i) ukuzimasa ngexesha nendawo echaziweyo kumsila wengwe; okanye
 - (ii) ukuhlala ezimasa de abe ukhululwe ukuba angaphindi azimase ngumntu owongameleyo kolo phando;
- (b) xa ebizwe phantsi kwecandelo 3(a), esala ukufungiswa okanye ukwenza isingqinisiso njengengqina; okanye 45
- (c) engaphumeleli, ngaphandle kwesizathu esanelisayo—
 - (i) ukuphendula ngokuzelelo nangokwanelisayo yonke imibuzo ebhekiswa kuye ngokusemthethweni phantsi kwecandelo 3(b);
 - (ii) ukuba avelise naluphi na uxwebhu olukuye okanye oluselugcinweni okanye oluphantsi kolawulo lwakhe athe wacelwa ukuba aluvelise phantsi kwecandelo 3(b), waphula umthetho kwaye angadliwa okanye avalelwe ixesha elingagqithanga kwi-12 leenyanga okanye zombini, umdliwo nokuvalelwa. 50

(2) Umntu— 55

- (a) ogrogrisa okanye othintela omnye umntu kubungqina obuza kunikezelwa phambi kweNdlu yoWisomthetho okanye ikomiti;

- (b) ukhuthaza omnye umntu—
- (i) ukuba azikhwebule ekunikezeleni ubungqina okanye ekuvezeni uxwebhu phambi kweNdlu yoWiso-mthetho okanye ikomiti; okanye
 - (ii) ukuba anike ubungqina obubuxoki phambi kweNdlu yoWiso-mthetho okanye ikomiti; 5
- (c) obetha okanye owohlwaya okanye ogrogrisa omnye umntu, okanye owalela lo mntu nayo nayiphi na inzuzo, ngenxa yokuba enike okanye ephakamisa ukunika ubungqina phambi kweNdlu yoWiso-mthetho okanye ikomiti;
- (d) othi ngenjongo yokulahlekisa iNdlu yoWiso-mthetho, okanye ikomiti, avezele iNdlu yoWiso-mthetho okanye ikomiti naluphina uxwebhu, lobuxoki, olungeyonyaniso, olubunjwe ngeenjongo zokulahlekisa okanye olukhohlisayo; okanye 10
- (e) othi mhlawumbi okanye hayi ngexesha lothawuziso phantsi kwecandelo 3, ngokuzithandela abonelele iNdlu yoWiso-mthetho okanye ikomiti ngolwazi, okanye enze ingxelo phambi kwayo, eubuxoki okanye elahlekisayo, 15
- waphula umthetho kwaye angadliwa okanye avalelwe ixesha elingagqithanga kwiminyaka emibini okanye zombini, umdliwo nokuvalelwa.
- (3) Umba wecandelwana (4), amacandelwana (1) nele (2) akawachaphazeli amalungu.
- (4) Ilungu elenza isenzo esikhankanywe kwicandelwana (1) okanye ele (2) lidelela 20 iNdlu yoWiso-mthetho yePhondo njengoko kuchaziwe kwicandelo 13 loMthetho waMalungelo aWodwa eziNdlu zoWiso-mthetho.

Ubhangiso loMthetho

6. Amacandelo 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 nelama-28 oMthetho weNtshona Koloni waMagunya naMalungelo aWodwa eNdlu yoWiso-mthetho, 1985 (uMthetho Nomb. 3 ka-1995), ayabhangiswa. 25

Isihloko esifutshane

7. Lo Mthetho ubizwa ngokuba nguMthetho waMangqina WeNtshona Koloni, ka-2005.

**IMEMORANDAM NGEENJONGO ZOMTHETHO OSAYILWAYO
WEPALAMENTE YEPHONDO LENTSHONA KOLONI
WAMANGQINA, KA-2005**

1. UMthetho waMagunya, aMalungelo aWodwa ePalamente neZindlu zoWiso-Mthetho zaMaphondo, wango-2004 (uMthetho kaZwelonke), wenza ukuba, phakathi kwezinye izinto, icandelo 117(2) loMgaqo-siseko weRiphabliki yoMzantsi Afrika ukuba lisebenze (uMgaqo-siseko kazwelonke), ngokwemigaqo apho umthetho wesizwe unokuchaza amalungelo awodwa athile nemiba ezindlu zowiso-mthetho zamaphondo.
2. ISahluko 5 soMthetho kazwelonke sijongana namangqina avele aphambi kweNdlu okanye ikomiti. Esi Sahluko asisebenzi kumaphondo kuba icandelo 115(c) loMgaqo-siseko kazwelonke lifuna ukuba lo mba ujongwe okanye ulawulwe ngumthetho wephondo okanye imigaqo yezindlu ezahlukeneyo zowiso-mthetho zamaphondo. ICandelo 25(c) loMgaqo-siseko weNtshona Koloni libonelela kwangomba omnye kweli Phondo.
3. Injongo ephambili yalo Mthetho uSayilwayo kukuqinisekisa ukuba icandelo 115(c) loMgaqo-siseko necandelo 25(c) loMgaqo-siseko weNtshona Koloni liyasetyenziswa. Ubhalwe ngokuhambelana neSahluko 5 soMthetho kazwelonke.
4. Ngokushwankathelayo lo Mthetho uSayilwayo ubonelela ngoku kulandelayo:

ISoloty 1 lineenkcazelo.

ISoloty 2 licacisa umgaqo wokukhutshelwa kwamangqina iisamani zokuvela phambi kwePalamente yePhondo okanye ikomiti yePalamente.

ISoloty 3 linika umgaqo omalunga nokuvavanywa kwamangqina yiPalamente yePhondo neekomiti zayo.

ISoloty 4 libonelela amangqina ngamalungelo afanayo nalawo amangqina avela phambi kweNkundla ePhakamileyo yoMzantsi Afrika. Nangona kunjalo, ingqina alinakho ukwala ukuphendula umbuzo kuba lisithi lingazibambisa lona ngokwalo.

ISoloty 5 lichaza uluhlu lwamatyala olwaphulomthetho ayamene namangqina kwanokunika ubungqina phambi kwePalamente yePhondo neekomiti zayo. La matyala akawachaphazeli aMalungu ePalamente yePhondo. Isibonelelo siyenziwa sokuba iLungu elophula eli candelo lingabekwa ityala lokudelela yiPalamente.

ISoloty 6 lifuna ukubhangisa wonke uMthetho weNtshona Koloni waMagunya naMalungelo aWodwa eNdlu yoWiso-mthetho yePhondo, 1995 (uMthetho Nomb 3 ka-1995), ngaphandle kweSahluko 3A aMacandelo/nelama-29. Esi Sahluko sijongana namalungiselelo ezemali kwanemicimbi yabasebenzi, kwaye kufuneka sihlale sihleli kwincwadi yemithetho de lo miba ibe ihoyiwe luwiso-mthetho.

ISoloty 7 linesihloko esifutshane.
5. Lo Mthetho uSayilwayo awunazindleko zongezelelekileyo zezimali kwiPalamente yePhondo.

