

PROVINCE OF THE WESTERN CAPE

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**CONSTITUTION OF THE  
WESTERN CAPE AMENDMENT BILL  
(DETERMINATION OF NUMBER OF  
MEMBERS)**

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*(As introduced)*

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(DEPUTY SPEAKER)

[B 6—2023]

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PROVINSIE WES-KAAP

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**WYSIGINGSWETSONTWERP  
OP DIE GRONDWET  
VAN DIE WES-KAAP  
(BEPALING VAN GETAL LEDE)**

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*(Soos ingedien)*

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(ADJUNKSPEAKER)

[W 6—2023]

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IPHONDO LENTSHONA KOLONI

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**UMTHETHO OSAYILWAYO  
WOLUNGISO WOMGAQO-SISEKO  
WENTSHONA KOLONI (UMISELO  
LWENANI LAMALUNGU)**

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*(Njengoko wazisiwe)*

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(NGUSEKELA SOMLOMO)

[B 6—2023]

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

# BILL

**To amend the Constitution of the Western Cape, 1997, so as to provide for the number of members of the Provincial Parliament; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Provincial Parliament of the Western Cape, as follows:—

**Substitution of section 13 of the Constitution of the Western Cape, 1997**

1. The following section is substituted for section 13 of the Constitution of the Western Cape, 1997: 5

**“[Composition] Number of members of the Provincial Parliament**

**13. (1) The Provincial Parliament consists of [42 elected members] one member for every 100 000 of the population whose ordinary place of residence is within the Province, but may not exceed 80 members.**

**(2) The number of members of the Provincial Parliament must be determined in the manner provided for in its rules and orders.”** 10

**Short title and commencement**

2. This Act is called the Constitution of the Western Cape Amendment Act (Determination of Number of Members), 2023, and in respect of:

(1) section 13(1) of the Constitution of the Western Cape, 1997, takes effect on the day before the first day of polling for the next Provincial Parliament; 15

(2) section 13(2) of the Constitution of the Western Cape, 1997, takes effect on publication in the *Government Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF  
THE WESTERN CAPE AMENDMENT BILL (DETERMINATION OF  
NUMBER OF MEMBERS)**

**1. BACKGROUND**

On 4 February 1997, the Constitution of the Republic of South Africa, 1996 (“the Constitution”), came into effect.

Section 105(2) of the Constitution provides that:

“A provincial legislature consists of between 30 and 80 members. The number of members, which may differ among the provinces, must be determined in terms of a formula prescribed by national legislation.”

Section 143(1) of the Constitution provides that:

“A provincial constitution, or constitutional amendment, must not be inconsistent with this Constitution, but may provide for —(a) provincial legislative or executive structures and procedures that differ from those provided for in this Chapter;”

On 17 March 1999, after a process of public consultation, the Electoral Commission determined the number of members to be allocated to each provincial legislature after the election in 1999.

This determination was based on a formula in item 2 of Schedule 3 of the Electoral Act, 1998 (“the Electoral Act”), which provides:

“By taking into account available scientifically based data and representations by interested parties, the number of seats of a provincial legislature must be determined by awarding one seat for every 100 000 of the population whose ordinary place of residence is within that province, with a minimum of 30 and a maximum of 80 seats.”

The Electoral Commission had authority to determine the number of members allocated to provincial legislatures until 31 March 1999.

On 16 January 1998, the Western Cape’s provincial constitution (“the Provincial Constitution”) came into effect.

Section 13 of the Provincial Constitution determines that:

“The Provincial Parliament consists of 42 elected members.”

At the time it was not clear whether the Electoral Commission’s determination in terms of national legislation (39 members) or the determination of the Provincial Constitution (42 members) should prevail.

This uncertainty was resolved by the Constitutional Court in *Premier of the Province of the Western Cape and Another v Electoral Commission and Another*, 1999 (11) BCLR 1209 (CC) (“the judgment”). The judgment (in paragraphs 8, 9 and 10) held that:

“The succinct legal issue in this case, therefore, is whether section 105(2) and the legislation passed pursuant thereto, has any application to the composition of a provincial legislature which is provided for in a provincial constitution.

It does not. Section 143(1) permits provincial constitutions to provide for different legislative structures and procedures for provinces that choose to establish their own distinctive legislatures . . . If a provincial constitution regulates the procedures and structures of a provincial legislature and in so doing does not violate section 143(2), then the provisions of chapter 6, including section 105(2), have no

application to that province. One might loosely refer to these provisions of chapter 6 as default provisions: they provide the framework for provincial legislative and executive structures and procedures where none is provided for by a provincial constitution. If section 105(2) has no application, then neither does any legislation authorised pursuant thereto . . .

. . . Once a province has determined its own legislative structures in terms of section 143, such structures cannot be altered by national legislation . . .”

There are, therefore, two ways in which the number of members of a provincial legislature can be determined.

Firstly, in accordance with a provincial constitution where that constitution makes provision for the structure of the provincial legislature and, secondly, in accordance with national legislation pursuant to section 105(2) of the Constitution for provinces that do not have provincial constitutions.

On 27 August 2021, the Electoral Act was amended by the Electoral Laws Amendment Act, 2021 (“the amendment Act”).

The amendment Act amended Schedule 3 of the Electoral Act. Items 2 and 3 of Schedule 3 of the Electoral Act now reads as follows:

“2. Formula for determining number of members of provincial legislatures.—

By taking into account available scientifically based data and representations by interested parties, the number of seats of a provincial legislature must be determined by awarding one seat for every 100 000 of the population whose ordinary place of residence is within that province, with a minimum of 30 and a maximum of 80 seats.

3. Commission responsible for determination of seats.—

(1) The determination of seats contemplated in items 1 and 2 must be completed by the Commission before every election and the Commission must publish such a determination in the prescribed manner.

(2) The Commission must give notice in the *Government Gazette* of the time and date on which, and the venue where, the determination is to take place, and must afford interested parties an opportunity to make representations before the determination is made.”

Hence, for the 2024 general election, and thereafter, the number of members in the other provincial legislatures will be determined in this manner.

Mindful of this, on 28 March 2023, the Provincial Parliament adopted recommendations by the Standing Committee on the Premier and Constitutional Matters that section 13 of the Constitution of the Western Cape, 1997, be amended to increase the number of members of the Provincial Parliament.

## 2. OBJECTS OF BILL

The purpose of the Bill is to amend section 13 of the Constitution of the Western Cape, 1997, to provide for—

- (a) a formula for the determination of the number of members of the Provincial Parliament;
- (b) an upper limit for the number of members of the Provincial Parliament; and
- (c) a mechanism for the determination of the number of members of the Provincial Parliament.

### 3. CONTENTS OF BILL

**Clause 1** substitutes section 13 of the Constitution of the Western Cape, 1997, to provide for—

- (a) a formula for the determination of the number of members of the Provincial Parliament;
- (b) an upper limit for the number of members of the Provincial Parliament; and
- (c) a mechanism for the determination of the number of members of the Provincial Parliament.

**Clause 2** provides for the short title of the Act and for commencement of the Act.

Commencement of section 13(1) of the Constitution of the Western Cape, 1997, is linked to section 108(4) of the Constitution that provides that:

“A provincial legislature remains competent to function from the time it is dissolved or its term expires, until the day before the first day of polling for the next legislature”.

Commencement of section 13(2) of the Constitution of the Western Cape, 1997, precedes commencement of section 13(1) since the determined number of members must be communicated to the Electoral Commission before the next general election.

### 4. CONSULTATION

The Provincial Parliament consulted internally:

- (a) By establishing an ad-hoc committee titled Ad-hoc Committee: WCPP Seats, which committee consisted of representatives of all political parties represented in the Provincial Parliament, and which committee further made recommendations to the House regarding the review of the number of members of the Provincial Parliament; and
- (b) Through its Standing Committee on the Premier and Constitutional Matters, which committee made recommendations to the House regarding the review of the number of members of the Provincial Parliament.

The Provincial Parliament consulted further with:

- (a) Its parliamentary administration;
- (b) The Director-General for the Province of the Western Cape;
- (c) The Provincial Treasury;
- (d) The provincial Department of Infrastructure;
- (e) The provincial Department of Police Oversight and Community Safety; and
- (f) The Electoral Commission of South Africa.

### 5. PUBLIC INVOLVEMENT

In accordance with section 10(2) of the Constitution of the Western Cape, 1997:

- (a) The Bill and memorandum on the objects of the Bill was published in the *Provincial Gazette* on 19 May 2023;
- (b) The Bill was published in *Die Burger* and *Cape Argus* on 19 May 2023;
- (c) The Bill was published in *Vukani* on 25 May 2023.

The Bill was also published on the Provincial Parliament’s website and social media.

The closing date for comment was 27 June 2023.

One member of the public commented.

### 6. FINANCIAL IMPLICATIONS

The Provincial Parliament will incur costs for legal representation in the Constitutional Court in respect of certification of the Bill.

The Bill will have financial implications in respect of:

- (a) the total remuneration for members;
- (b) accommodation for members;
- (c) allowances to political parties;
- (d) enabling allowances to members;
- (e) support by the parliamentary administration; and
- (f) operational expenditure related to the work of members.

The Provincial Parliament will be responsible to carry the costs of implementing the legislation.

## **7. LEGISLATIVE COMPETENCE**

The Speaker to the Provincial Parliament is satisfied that all the provisions of the Bill fall within the Province's legislative competence.

**ALGEMENE VERDUIDELIKENDE NOTA:**

[ ] Woorde in vet druk in vierkantige hake dui uitlatings uit bestaande verordeninge aan.

\_\_\_\_\_ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordeninge aan.

# WETSONTWERP

**Om die Grondwet van die Wes-Kaap, 1997, te wysig om voorsiening te maak vir die getal lede van die Provinsiale Parlement; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

**D**AAR WORD BEPAAL deur die Provinsiale Parlement van die Wes-Kaap, soos volg:—

## **Vervanging van artikel 13 van die Grondwet van die Wes-Kaap, 1997**

1. Artikel 13 van die Grondwet van die Wes-Kaap, 1997, word deur die volgende artikel vervang: 5

### **“[Samestelling] Getal lede van Provinsiale Parlement**

**13. (1)** Die Provinsiale Parlement bestaan uit **[42 verkose lede]** een lid vir elke 100 000 van die bevolking wie se gewone verblyfplek binne die Provinsie is, maar 80 lede mag nie oorskry word nie.

**(2)** Die getal lede van die Provinsiale Parlement moet vasgestel word op die wyse waarvoor in sy reëls en orders voorsiening gemaak word.”. 10

## **Kort titel en inwerkingtreëding**

2. Hierdie Wet heet die Wysigingswetsontwerp op die Grondwet van die Wes-Kaap (Bepaling van Getal Lede), 2023, en ten opsigte van:

(1) artikel 13(1) van die Grondwet van die Wes-Kaap, 1997, tree in werking op die dag voor die eerste dag waarop die stemming vir die volgende Provinsiale Parlement plaasvind; 15

(2) artikel 13(2) van die Grondwet van die Wes-Kaap, 1997, tree in werking op publikasie in die *Staatskoerant*.

**MEMORANDUM OOR DIE OOGMERKE VAN DIE  
WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN DIE WES-  
KAAP (BEPALING VAN GETAL LEDE)**

**1. AGTERGROND**

Op 4 Februarie 1997 het die Grondwet van die Republiek van Suid-Afrika, 1996 (“die Grondwet”), in werking getree.

Artikel 105(2) van die Grondwet bepaal:

“’n Provinsiale wetgewer bestaan uit tussen 30 en 80 lede. Die getal lede wat van provinsie tot provinsie kan verskil, moet bepaal word ooreenkomstig formule wat deur nasionale wetgewing voorgeskryf word.”

Artikel 143(1) van die Grondwet bepaal:

“’n Provinsiale grondwet of grondwetwysiging mag nie met hierdie Grondwet onbestaanbaar wees nie, maar kan voorsiening maak vir —(a) provinsiale wetgewende of uitvoerende strukture en prosedures wat verskil van die waarvoor in hierdie Hoofstuk voorsiening gemaak word;”

Op 17 Maart 1999, ná proses van openbare oorlegpleging, het die Verkiesingskommissie die getal lede vasgestel wat aan elke provinsiale wetgewer ná die verkiesing in 1999 toegewys sou word.

Hierdie bepaling is gegrond op formule in item 2 van Bylae 3 van die Kieswet, 1998 (“die Kieswet”), wat bepaal:

“Met inagneming van beskikbare wetenskaplik gefundeerde data en vertoë deur belanghebbende partye, moet die getal setels van provinsiale wetgewer vasgestel word deur een setel vir elke 100 000 van die bevolking wie se gewone verblyfplek binne daardie provinsie is, met minimum van 30 en maksimum van 80 setels, toe te ken.”

Die Verkiesingskommissie het tot 31 Maart 1999 die bevoegdheid gehad om die getal lede vas te stel wat aan provinsiale wetgewers toegewys word.

Op 16 Januarie 1998 het die Wes-Kaapse provinsiale grondwet (“die Provinsiale Grondwet”) in werking getree.

Artikel 13 van die Provinsiale Grondwet bepaal:

“Die Provinsiale Parlement bestaan uit 42 verkose lede.”

Op daardie tyd was dit nie duidelik of die Verkiesingskommissie se bepaling ingevolge nasionale wetgewing (39 lede) of die bepaling van die Provinsiale Grondwet (42 lede) voorrang sou geniet nie.

Hierdie onsekerheid is deur die Konstitusionele Hof in *Premier van die Provinsie Wes-Kaap en ander v Verkiesingskommissie en ander*, 1999 (11) BCLR 1209 (CC) (“die uitspraak”) opgelos. Die uitspraak (in paragraaf 8, 9 en 10) het beslis:

“Die bondige regskwessie in hierdie saak is dus of artikel 105(2) en die wetgewing wat ingevolge daarvan aangeneem is, enige toepassing het op die samestelling van provinsiale wetgewer waarvoor in provinsiale grondwet voorsiening gemaak word.

Dit het nie toepassing nie. Artikel 143(1) laat provinsiale grondwette toe om voorsiening te maak vir verskillende wetgewende strukture en prosedures vir provinsies wat kies om hul eie kenmerkende wetgewers tot stand te bring . . . Indien ’n provinsiale grondwet die prosedures en strukture van ’n provinsiale wetgewer reguleer en sodoende nie artikel 143(2) skend nie, dan het die bepalings



van hoofstuk 6, insluitende artikel 105(2), geen toepassing op daardie provinsie nie. Mens kan losweg na hierdie bepalings van hoofstuk 6 verwys as verstekbepalings: dit verskaf die raamwerk vir provinsiale wetgewende en uitvoerende strukture en prosedures waar daar nie in provinsiale grondwet daarvoor voorsiening gemaak word nie. Indien artikel 105(2) geen toepassing het nie, dan het geen wetgewing wat ingevolge daarvan gemagtig is, [toepassing] nie . . .

. . . Sodra provinsie sy eie wetgewende strukture ingevolge artikel 143 bepaal het, kan sulke strukture nie deur nasionale wetgewing verander word nie . . .”

[“The succinct legal issue in this case, therefore, is whether section 105(2) and the legislation passed pursuant thereto, has any application to the composition of a provincial legislature which is provided for in a provincial constitution.

“It does not. Section 143(1) permits provincial constitutions to provide for different legislative structures and procedures for provinces that choose to establish their own distinctive legislatures . . . If a provincial constitution regulates the procedures and structures of a provincial legislature and in so doing does not violate section 143(2), then the provisions of chapter 6, including section 105(2), have no application to that province. One might loosely refer to these provisions of chapter 6 as default provisions: they provide the framework for provincial legislative and executive structures and procedures where none is provided for by a provincial constitution. If section 105(2) has no application, then neither does any legislation authorised pursuant thereto . . .

“. . . Once a province has determined its own legislative structures in terms of section 143, such structures cannot be altered by national legislation . . .”]

Daar is dus twee maniere waarop die getal lede van provinsiale wetgewer vasgestel kan word.

Eerstens, ooreenkomstig provinsiale grondwet waar daardie grondwet vir die struktuur van die provinsiale wetgewer voorsiening maak, en tweedens, ooreenkomstig nasionale wetgewing ingevolge artikel 105(2) van die Grondwet vir provinsies wat nie provinsiale grondwette het nie.

Op 27 Augustus 2021 is die Kieswet gewysig met die Wysigingswet op Kieswette, 2021 (“die Wysigingswet”).

Die Wysigingswet het Bylae 3 van die Kieswet gewysig. Item 2 en 3 van Bylae 3 van die Kieswet lees nou soos volg:

- “2. Formule vir vasstelling van getal lede van provinsiale wetgewers.—  
Met inagneming van beskikbare wetenskaplik gefundeerde data en verhoë deur belanghebbende partye, moet die getal setels van provinsiale wetgewer vasgestel word deur een setel vir elke 100 000 van die bevolking wie se gewone verblyfplek binne daardie provinsie is, met minimum van 30 en maksimum van 80 setels, toe te ken.
3. Kommissie verantwoordelik vir vasstelling van setels.—
  - (1) Die vasstelling van setels beoog in items 1 en 2 moet voor elke verkiesing deur die Kommissie voltooi word en die Kommissie moet so vasstelling op die voorgeskrewe wyse publiseer nie.
  - (2) Die Kommissie moet in die *Staatskoerant* van die tyd en datum waarop, en die plek waar, die vasstelling sal plaasvind, kennis gee, en moet belanghebbende partye geleentheid bied om verhoë te rig voordat die vasstelling gedoen word.”

Dus, vir die 2024- algemene verkiesing en daarna sal die getal lede in die ander provinsiale wetgewers op hierdie wyse vasgestel word.

Met dit in gedagte het die Provinsiale Parlement op 28 Maart 2023 aanbevelings van die Staande Komitee oor die Premier en Grondwetlike Aangeleenthede aangeneem dat artikel 13 van die Grondwet van die Wes-Kaap, 1997, gewysig moet word om die getal lede van die Provinsiale Parlement te vergroot.

## 2. OOGMERKE VAN WETSONTWERP

Die doel van die Wetsontwerp is om artikel 13 van die Grondwet van die Wes-Kaap, 1997, te wysig om voorsiening te maak vir—

- (a) formule vir die bepaling van die getal lede van die Provinsiale Parlement;
- (b) boperk vir die getal lede van die Provinsiale Parlement; en
- (c) meganisme vir die bepaling van die getal lede van die Provinsiale Parlement.

## 3. INHOUD VAN WETSONTWERP

**Klousule 1** vervang artikel 13 van die Grondwet van die Wes-Kaap, 1997, om voorsiening te maak vir—

- (a) formule vir die bepaling van die getal lede van die Provinsiale Parlement;
- (b) boperk vir die getal lede van die Provinsiale Parlement; en
- (c) meganisme vir die bepaling van die getal lede van die Provinsiale Parlement.

**Klousule 2** maak voorsiening vir die kort titel van die Wet en vir die inwerkingtrede van die Wet.

Die inwerkingtrede van artikel 13(1) van die Grondwet van die Wes-Kaap, 1997, hou verband met artikel 108(4) van die Grondwet wat bepaal:

“’n Provinsiale wetgewer bly bevoeg om te funksioneer vanaf sy ontbinding of die verstryking van sy termyn tot op die dag voor die eerste dag waarop die stemming vir die volgende wetgewer plaasvind.”

Die inwerkingtrede van artikel 13(2) van die Grondwet van die Wes-Kaap, 1997, gaan die inwerkingtrede van artikel 31(1) vooraf aangesien die Verkiesingskommissie voor die volgende verkiesing in kennis gestel moet word van die vasgestelde getal lede.

## 4. OORLEGPLEGING

Die Provinsiale Parlement het intern oorleg gepleeg:

- (a) Deur ad hoc-komitee by name die Ad hoc-komitee: WKPP-setels tot stand te bring, welke komitee uit verteenwoordigers bestaan het van al die politieke partye wat in die Provinsiale Parlement verteenwoordig word, en welke komitee verder aanbevelings by die Huis gemaak het oor die hersiening van die getal lede van die Provinsiale Parlement; en
- (b) Deur sy Staande Komitee oor die Premier en Grondwetlike Aangeleenthede, welke komitee aanbevelings by die Huis gemaak het oor die hersiening van die getal lede van die Provinsiale Parlement.

Die Provinsiale Parlement het verder oorleg gepleeg met:

- (a) Sy parlementêre administrasie;
- (b) Die Direkteur-generaal van die Provinsie Wes-Kaap;
- (c) Die Provinsiale Tesourie;
- (d) Die provinsiale Departement van Infrastruktuur;
- (e) Die provinsiale Departement van Polisietoedig en Gemeenskapsveiligheid; en
- (f) Die Verkiesingskommissie van Suid-Afrika.

## 5. OPENBARE BETROKKENHEID

Ooreenkomstig artikel 10(2) van die Grondwet van die Wes-Kaap, 1997, is:

- (a) Die Wetsontwerp en memorandum oor die oogmerke van die Wetsontwerp op 19 Mei 2023 in die *Provinsiale Koerant* gepubliseer;
- (b) Die Wetsontwerp op 19 Mei 2023 in *Die Burger* en die *Cape Argus* gepubliseer;

(c) Die Wetsontwerp op 25 Mei 2023 in *Vukani* gepubliseer.

Die Wetsontwerp is ook op die Provinsiale Parlement se webtuiste en op sosiale media gepubliseer.

Die sluitingsdatum vir kommentaar was 27 Junie 2023.

Een lid van die publiek het kommentaar gelewer.

## **6. FINANSIËLE IMPLIKASIES**

Die Provinsiale Parlement sal koste aangaan vir regsverteenvoording in die Konstitusionele Hof ten opsigte van die sertifisering van die Wetsontwerp.

Die Wetsontwerp sal finansiële implikasies inhou ten opsigte van:

- (a) die totale vergoeding vir lede;
- (b) akkommodasie vir lede;
- (c) toelaes aan politieke partye;
- (d) instaatstellingstoelaes aan lede;
- (e) ondersteuning deur die parlementêre administrasie; en
- (f) bedryfsbesteding wat met die werksaamhede van lede verband hou.

## **7. WETGEWENDE BEVOEGDHEID**

Die Speaker van die Provinsiale Parlement is oortuig dat al die bepalings in die Wetsontwerp binne die wetgewende bevoegdheid van die Provinsie ressorteer.

**INQAKU ELICACISAYO JIKELELE:**

[ ] Amagama angqindilili kwizibiyeli zesikwere abonakalisa ush-  
iyo kuqaliso lowiso-mthetho olulhoyo.

\_\_\_\_\_ Amagama akrwelelwe ngomgca ongqindilli abonakalisa  
ufakelo kuwiso lomthetho olukhoyo.

# UMTHETHO OSAYILWAYO

**Ukulungisa uMgaqo-siseko weNtshona Koloni, 1997, ukuze ubonelele ngenani laMalungu ePalamente yePhondo; kwakunye nokubonelela ngemiba enxulumene noko.**

**W**ENZIWE USEBENZE yiPalamente yePhondo leNtshona Koloni, ngolu hlobo:—

**Ukufakwa kwelinye icandelo endaweni yele-13 loMgaqo-siseko weNtshona Koloni, 1997**

1. Eli candelo lilandelayo kungena endaweni yalo icandelo 13 loMgaqo-siseko weNtshona Koloni, 1997: 5

**“Inani laMalungu**

**13. (1) IPalamente yePhondo [aMalungu anyuliweyo angama-42] iLungu elinye kwi-100 000 ngalinye lenani labantu indawo yabo eqhelekileyo yokuhlala iphakathi kwiPhondo, kodwa alinakho ukugqitha kuMalungu angama- 80. 10**

**(2) Inani lezihlalo zePalamente yePhondo malimiselwe ngendlela ebonelelwa kwimithetho nemiyalelo yayo”.**

**Isihloko esifutshane kunye noqaliso**

2. Lo Mthetho ubizwa uMthetho woMgaqo-siseko weNtshona Koloni (Umiselo lweNani laMalungu), 2023, kwaye ngokumayela noku:— 15

(1) icandelo 13(1) loMgaqo-siseko weNtshona Koloni, 1997, liqalisa ukusebenza phambi kosuku lokuqala lolonyulo lwePalamente yePhondo elandelayo;

(2) icandelo 13(2) loMgaqo-siseko weNtshona Koloni, 1997, liqalisa ukusebenza ngopapasho lweGazethi kaRhulumente. 20

**IMEMORANDAM NGEZAKHI ZOMGAQO-SISEKO WOMTHETHO  
OSAYILWAYO WOLUNGISO WENTSHONA KOLONI**

**1. IMVELAPHI**

Ngowesi-4 Februwari 1997, uMgaqo-siseko weRiphabhliki yoMzantsi Afrika, 1996 (“uMgaqo-siseko”) waye waqalisa ukusebenza.

ICandelo 105(2) loMgaqo-siseko libonelela ngokuba:

“INdlu yoWiso-mthetho yePhondo yenziwa ngaMalungu aphakathi kwama-30 nama-80. Inani laMalungu, elinokwahluka phakathi kwamaphondo, malimiselwe ngokwemigaqo yendlela exelwe luwiso-mthetho lukazwelonke.”

ICandelo 143(1) loMgaqo-siseko libonelela ngokuba:

“UMgaqo-siseko wephondo, okanye isilungiso soMgaqo-siseko, masingakhabani nalo loMgaqo-siseko, kodwa singabonelela —(a) ngeziseko zowiso-mthetho okanye ezesisigqeba nemigaqo yephondo eyahlukahlukeneyo ibonelelwe kwesi Sahluko;”

Ngowe-17 Matshi 1999, emva kwenkqubo yoboniswano noluntu, iKhomishoni yoLonyulo yamisela inani lezihlalo emazinikezelwe kwiNdlu yoWiso-mthetho yePhondo nganye emva kolonyulo ngo-1999.

Olu miselo belusekelezwe kwifomula kumba 2 weShedyuli 3 yoMthetho woLonyulo, 1998 (“uMthetho woLonyulo”), obonelela:

“Ngokuthabathela ingqalelo ulwazi olukhoyo ngokwenzululwazi nomelo ngamaqela anomdla, inani lezihlalo zeNdlu yoWiso-mthetho malimiselwe ngokunikezela kwi-100 000 ngalinye lenani labantu indawo yabo eqhelekileyo yokuhlala iphakathi kwiPhondo, ngobuncinane bama-30 kunye nesininzi sama-80 ezihlalo.”

IKhomishoni yoLonyulo ibe negunya lokumisela inani lezihlalo ezinikezelwa kwiziNdlu zoWiso-mthetho zaMaphondo de kwaba ngowama-31 Matshi 1999.

Ngowe-16 Januwari 1998, uMgaqo-siseko wePhondo leNtshona Koloni (‘uMgaqo-siseko wePhondo’) uqalise ukusebenza.

ICandelo 13 loMgaqo-siseko wePhondo limisela ngokuba: “IPalamente yePhondo yenziwa ngaMalungu anyuliweyo angama-42.”

Ngela xesha, bekungacacanga ukuba ingaba umiselo lwe-IEC ngokwemigaqo yowiso-mthetho lukazwelonke (aMalungu angama-39) okanye umiselo loMgaqo-siseko wePhondo (aMalungu angama-42) kufuneka lugcinwe.

Oku kungaqiniseki kusunjululwe yiNkundla yoMgaqo-siseko apho *iNkulumbuso yeleNtshona Koloni naBanye babephikisana neKhomishoni yoLonyulo naBanye* 1999 (11) BCLR 1209 (CC) (“isigwebo”). Isigwebo (kwimihlathi 8, 9 nowe 10) sigwebe senjenje:

“Umba wezomthetho omfutshane kule meko, ke ngoko, kukuba ingaba icandelo 105(2) kunye nowiso-mthetho oluphunyezwe ngenxa yoku, lunomsebenzi kuqulunqo lweNdlu yoWiso-mthetho yePhondo olubonelelwa kuMgaqo-siseko wePhondo.

“Alunawo. ICandelo 143(1) livumela iMgaqo-siseko yaMaphondo ukuba ibonelele ngeziseko ezahlukeneyo zowiso-mthetho nemigaqo yamaphondo akhetha ukuseka iziNdlu zoWiso-mthetho zawo ezizimeleyo . . . Ukuba uMgaqo-siseko wePhondo umisela imigaqo neziseko zeNdlu yoWiso-mthetho kwaye ngokwenza njalo awukhabani necandelo 143(2), ngoko ke izibonelelo zeSahluko

6, kuquka iCandelo 105(2), alinamsebenzi kwela phondo. Omnye angabhekisa ngokukhululekileyo kwezi zibonelelo zesahluko 6 njengezibonelelo zesiphene: zibonelela ngeziseko zowiso-mthetho zamaphondo nesigqeba kwanemigaqo apho kungekho zibonelelwa nguMgaqo-siseko wePhondo. Ukuba iCandelo 105(2) alinamsebenzi, ngoko ke akukho naluphi na uwiso-mthetho lugunyaziswayo ngenxa yoku . . .

“... Nje ukuba iphondo limisele iziseko zalo zowiso-mthetho ngokwemigaqo yecandelo 143, iziseko ezinjalo azinakho ukuguqulwa luwisomthetho lukazwelonke. . .”

Kukho, ke ngoko, iindlela ezimbini apho inani laMalungu eNdlu yoWiso-mthetho elingamiselwa ngayo.

Okokuqala, ngokuhambelana noMgaqo-siseko wePhondo apho uMgaqo-siseko usenza isibonelelo kwisiseko seNdlu yoWiso-mthetho kwaye, okwesibini, ngokuhambelana nowiso-mthetho lukazwelonke ngenxa yecandelo 105(2) lweMigaqo-siseko yamaphondo angenamigaqo-siseko yamaphondo.

Ngowama-27 Agasti 2021, uMthetho woLonyulo walungiswa nguMthetho woLungiso weMithetho yoLonyulo, 2021 (“uMthetho woLungiso”).

UMthetho woLungiso ulungise iShedyuli 3 yoMthetho woLonyulo. Imiba 2 nowesi 3 yeShedyuli 3 yoMthetho woLonyulo ngoku ifundeka ngolu hlobo:

“2. Ifomula yokumisela inani laMalungu eziNdlu zoWiso-mthetho zaMaphondo—

Ngokuthabathela ingqalelo ulwazi olufumanekayo lwezenzululwazi nomelo ngamaqela anomdla, inani lezihlalo zeNdlu yoWiso-mthetho yePhondo malimiselwe ngokunikezelwa kwesihlalo esinye kwi-100 000 ngalinye lenani labantu indawo yabo eqhelekileyo yokuhlala iphakathi kwiPhondo, ngobuncinane bama-30 kwanesininzi sama-80 ezihlalo.

3. IKhomishoni enoxanduva lomisele lwezihlalo—

- (1) Umisele lwezihlalo olucingelwa kwimiba nowesi 2 maluqukunjelwe yiKhomishoni phambi kolonyulo ngalunye kwaye iKhomishoni mayipapashe umisele olunjalo ngendlela echaziweyo.
- (2) IKhomishoni mayinike isaziso kwi*Gazethi kaRhulumente* sexesha nomhla apho, kunye nendawo apho, umisele luza kuqhuba khona, kwaye mayinikezele amaqela anomdla ithuba lokwenza iintetho phambi kokuba umisele lwenziwe.”

Yiyo loo nto, kulonyulo jikelele luka-2024, kunye nasemva koko inani lezihlalo kwezinye iziNdlu zaMaphondo liza kumiselwa ngale ndlela.

Kucingwa oku, ngowama-28 kaMatshi 2023, iPalamente yePhondo iphehlelele izindululo zeKomiti eSisigxina kwiNkulumbuso neMiba yoMgaqo-siseko zokuba icandelo 13 loMgaqo-siseko weNtshona Koloni, 1997 lulingiswe ukwandisa inani laMalungu ePalamente yePhondo.

## 2. IMIBA YOMTHETHO OSAYILWAYO

Injongo yoMthetho oSayilwayo kukuguqula icandelo 13 loMgaqo-siseko weNtshona Koloni, 1997 ukubonelela oku—

- (a) ifomula yomisele lwenani laMalungu ePalamente yePhondo;
- (b) unyino oluphezulu lwenani laMlaungu ePalamente yePhondo; kunye
- (c) nendlela yomisele lwenani laMalungu ePalamente yePhondo.

### 3. IZIQULATHO ZOMTHETHO OSAYILWAYO

**Isoloty 1** lingena endaweni yecandelo 13 loMgaqo-siseko weNtshona Koloni, 1997 ukubonelela oku—

- (a) ifomula yomisele lwenani laMalungu ePalamente yePhondo;
- (b) unyino oluphezulu lwenani laMlaungu ePalamente yePhondo; kunye
- (c) nendlela yomisele lwenani laMalungu ePalamente yePhondo.

**ISoloty 2** libonelela ngesihloko esifutshane soMthetho kunye noqaliso loMthetho.

Uqaliso lwecandelo 13(1) loMgaqo-siseko weNtshona Koloni, 1997 lunxulunyaniswa necandelo 108(4) loMgaqo-siseko elibonelela ngokuba:

“INdlu yoWiso-mthetho yePhondo ihleli inesakhono sokusebenza ukusukela ngexesha echithwa ngalo okanye ixesha layo liphelelwa, de kube ngumhla ophambi kosuku lokuqala leNdlu yoWiso-mthetho elandelayo”.

Uqaliso lwecandelo 13(2) loMgaqo-siseko weNtshona Koloni, 1997 lukhokela uqaliso lwecandelo 13(1) ngenxa yokuba umisele lwenani laMalungu makuthethwe ngalo kunye neKhomishoni yoLonyulo phambi kolonyulo jikelele olulandelayo.

### 4. UBONISWANO

IPalamente yePhondo ibonisene ngaphakathi:

- (a) Ngokuseka iKomiti yeThutyana esihloko sithi: IKomiti yeThutyana: iZihlalo ze-WCPP, Komiti leyo yenziwe ngabameli bawo onke amaqela ezopolitiko amelwe kwiPalamente yePhondo, kwaneKomiti ephinde yenza izindululo kwiNdlu mayela nokuqwalasela kwakhona inani lezihlalo zePalamente yePhondo; kwaye
- (b) Ngokusebenzisa iKomiti eSisigxina yayo kwiNkulumbuso neMiba yoMgaqo-siseko, le Komiti yenze izindululo kwiNdlu mayela nokuqwalasela kwakhona inani laMalungu ePalamente yePhondo.

IPalamente yePhondo iphinde yabonisana naba balandelayo:

- (a) Ulawulo Iwayo lwePalamente;
- (b) Umlawuli-Jikelele wePhondo leNtshona Koloni;
- (c) ISebe likaNondyebo wePhondo;
- (d) ISebe leZixhobo zokuSebenza lePhondo;
- (e) ISebe loLongamelo lwaMapolisa noKhuseleko loLuntu lephondo; kunye
- (f) neSebe loLongamelo lwaMapolisa noKhuseleko loLuntu lePhondo; kunye
- (g) NeKhomishoni yoLonyulo yoMzantsi Afrika.

### 5. UBANDAKANYEKO LOLUNTU

Ngokuhambelana necandelo 10(2) loMgaqo-siseko weNtshona Koloni, 1997:

- (a) UMthetho oSayilwayo kunye nememorandum kwimiba yoMthetho oSayilwayo upapashwe kwiGazethi yePhondo ngowe-19 kaMeyi 2023;
- (b) UMthetho oSayilwayo upapashwe kwiDie Burger neCape Argus ngowe- 19 kaMeyi 2023;
- (c) UMthetho oSayilwayo upapashwe kwiVukani ngowama-25 kaMeyi 2023.

UMthetho oSayilwayo ukwapapashwe kwiwebhsayithi yePalamente yePhondo kwanakumakhasi onxibelelwano lwezintlalo.

Umhla wokugqibela wokuphawula ube ngowama-27 kaJuni 2023. Ilungu loluntu elinye liphawule.

**6. IMIPHUMELA YEZIMALI**

IPalamente yePhondo iza kuthabathaba uxanduva lweendleko zomelo lwezomthetho kwiNkundla yoMgaqo-siseko ngokumayela noqinisekiso loMthetho oSayilwayo.

UMthetho oSayilwayo uza kuba nemiphumela yezimali ngokumayela noku:

- (a) itotali yentlawulo-mvuzo yaMalungu;
- (b) indawo yokuhlala yaMalungu;
- (c) izibonelelo zezimali kumaqela ezopolitiko;
- (d) izibonelelo ezixhobisayo kuMalungu;
- (e) inkxaso kulawulo lwePalamente; kunye
- (f) nenkcithomali yokusebenza eyayamene nomsebenzi waMalungu.

IPalamente yePhondo iza kuthabathaba uxanduva lweendleko zokuqalisa olu wiso-mthetho.

**7. ISAKHONO SEZOWISO-MTHETHO**

USomlomo wePalamente yePhondo wanelisekile kukuba zonke izibonelelo zoMthetho oSayilwayo ziwela phantsi kwesakhono sezowiso-mthetho sePhondo.