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GENERAL NOTICE

22 Draft Constitution of KwaZulu-Natal, 2004 2410

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ALGEMENE KENNISGEWING — ISAZISO KUWONKEWONKE — GENERAL NOTICE

No. 22, 2004

10 November 2004

KWAZULU-NATAL GRONDWET, 2004

DIE Konsepgrondwet van KwaZulu-Natal soos hieronder uiteengesit, is by die KwaZulu-Natal Wetgewer ingedien. Die publiek en ander belanghebbende groepe word uitgenooi om vertoë oor die Grondwet aan die volgende adres te rig:

AANDAG: Mnr B. D. Sibisi
Hoof: Huisverrigtinge
KwaZulu-Natal Wetgewer
Privaatsak X9112
PIETERMARITZBURG
3200

Om hom voor of op 1 Desember 2004 te bereik.

Afskrifte van die Konsepgrondwet kan verkry word by Kantoor no. 23, Greens Chambers, Langmarkstraat 239, Pietermaritzburg.

Mnr S. E. Shange
Waarnemende Sekretaris van die KwaZulu-Natal Wetgewer

KONSEPGRONDWET VAN KWAZULU-NATAL, 2004
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AANHEF

In nederige erkentlikheid teenoor die Almagtige God, neem ons, die mense van KwaZulu-Natal —

BESIEL deur 'n verlange om weg te beweeg van 'n verlede van stryd en geweld na 'n vry, vreedsame, veilige en voorspoedige samelewing vir die huidige geslag en die nageslag;

GEDAGTIG aan ons unieke en diverse erfenis en kultuur;

IN DIEPE BESEF van die onreg van die verlede en die strewê om dit te heel;

IN DIEPE BESEF van die behoefte aan vrede, versoening en geregtigheid;

IN DIEPE BESEF dat individuele vryheid gepaard moet gaan met verpligtinge van maatskaplike verantwoordelikheid en pligte jeens ons mede burgers en die samelewing;

IN ONS STREWE om die geïntegreerde en volhoubare ontwikkeling van KwaZulu-Natal en 'n beter lewensgehalte vir al sy mense deur regverdige en doeltreffende regering te bevorder; en

MET DIE BEVESTIGING dat KwaZulu-Natal, 'n provinsie van die Republiek van Suid-Afrika, gegrondves is op —

demokratiese waardes;

die erkenning van menseregte;

die erkenning van die behoefte aan morele herlewing;

die erkenning van die gesin;

die erkenning van godsdiens- en aanbiddingsvryheid;

die beginsels van wedersydse vertroue en samewerking;

samewerkende, verantwoordelike en verantwoordbare regering en goeie staatsbestuur;

die oppergesag van die reg; en

die erkenning van, respek vir, en trou aan die nasionale Grondwet as die hoogste reg in die Republiek van Suid-Afrika;

NOU HIERBY DEUR ONS VERKOSE VERTEENWOORDIGERS hierdie Grondwet vir KwaZulu Natal aan.

ONS BID —

dat God aan ons leiers wysheid, kennis en begrip sal skenk om ons mense te regeer en te dien; en
dat God ons land sal heel en ons mense beskerm.
Nkosi Sikelel' iAfrika. God Bless South Africa. God Seën Suid-Afrika.

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HOOFSTUK 1 STIGTINGSBEPALINGS

Provinsie KwaZulu-Natal

1. KwaZulu-Natal is 'n provinsie van die Republiek van Suid-Afrika soos deur die Grondwet van die Republiek van Suid-Afrika, 1996 ingestel (hierna die nasionale Grondwet genoem).

Grense van KwaZulu-Natal

2. Die grense van KwaZulu-Natal word deur die nasionale Grondwet vasgestel.

Aanname, status en uitleg van hierdie Grondwet

3. (1) Hierdie Grondwet word ingevolge die nasionale Grondwet, die hoogste reg van die Republiek van Suid-Afrika, vir KwaZulu-Natal aangeneem.
- (2) Die wetgewende en uitvoerende bevoegdhede en funksies van KwaZulu-Natal wat in hierdie Grondwet opgeteken is, word uit-sluitlik aan die nasionale Grondwet ontleen.
- (3) Die bepalings van hierdie Grondwet moet nie uitgelê word as sou dit enige wetgewende of uitvoerende gesag wat onbestaanbaar met die nasionale Grondwet is, aan KwaZulu-Natal opdra nie.
- (4) In geval van teenstrydigheid tussen verskillende tekste van hierdie Grondwet geniet die Engelse teks voorrang.

Toepassing van hierdie Grondwet

4. (1) Hierdie Grondwet geld vir KwaZulu-Natal.
- (2) Behoudens die nasionale Grondwet, is hierdie Grondwet die hoogste reg in KwaZulu-Natal, en die verpligtinge wat dit opleë moet getrou en sonder versuim nagekom word.

KwaZulu-Natal wapenskild, provinsiale simbole en eerbewyse

5. Provinsiale wetgewing kan voorsiening maak vir —
 - (a) 'n wapenskild vir die provinsie KwaZulu-Natal;
 - (b) provinsiale simbole behalwe 'n wapenskild; en
 - (c) die toekenning van provinsiale eerbewyse.

HOOFSTUK 2 PROVINSIALE WETGEWER

Wetgewende gesag

6. (1) Die wetgewende gesag van KwaZulu-Natal berus by die Provinsiale Wetgewer.
- (2) Die Provinsiale Wetgewer word slegs deur die nasionale Grondwet en hierdie Grondwet gebind, en moet in ooreenstemming met en binne die perke deur dié Grondwette opgelê, handel.
- (3) Die Provinsiale Wetgewer kan —
 - (a) hierdie Grondwet vervang, wysig of herroep;
 - (b) wetgewing vir KwaZulu-Natal aanneem ingevolge die nasionale Grondwet en in ooreenstemming met hierdie Grondwet;
 - (c) wetgewing vir KwaZulu-Natal betreffende enige aangeleentheid wat deur nasionale wetgewing aan KwaZulu-Natal opgedra is, aanneem; en
 - (d) enige van sy wetgewende bevoegdhede in paragraaf (b) bedoel en, waar dit toegelaat word, enige van sy bevoegdhede in paragraaf (c) bedoel, aan 'n Munisipale Raad opdra.
- (4) Die Provinsiale Wetgewer kan —
 - (a) by wyse van 'n besluit by die Nasionale Vergadering aanbeveel om wetgewing betreffende enige aangeleentheid buite die gesag van die Provinsiale Wetgewer, of ten opsigte waarvan 'n Parlements-wet voorrang bo provinsiale wetgewing geniet, aan te neem;

- (b) by wyse van 'n besluit by die Nasionale Raad van Provinsies aanbeveel dat dit wetgewing betreffende enige ander geleentheid moet aanneem; en
- (c) by wyse van 'n besluit, wat met die ondersteunende stem van minstens twee derdes van sy lede aangeneem is, die Parlement versoek om die naam van die provinsie te verander.

Wetsontwerpe om hierdie Grondwet te vervang, te wysig of te herroep

7. 'n Wetsontwerp om hierdie Grondwet te vervang, te wysig of te herroep —

- (a) moet deur die Provinsiale Wetgewer met die ondersteunende stem van minstens twee derdes van sy lede aangeneem word; en
- (b) mag slegs grondwetlike bepalings insluit.

Samestelling van Provinsiale Wetgewer

- 8. (1) Die Provinsiale Wetgewer bestaan uit hoogstens 80 verkose lede.
- (2) Die aantal lede moet bepaal word ooreenkomstig 'n formule wat deur nasionale wetgewing voorgeskryf word.

Verkieping van Provinsiale Wetgewer

9. Die Provinsiale Wetgewer bestaan uit persone wat as lede verkies is ingevolge 'n kiesstelsel wat —

- (a) deur nasionale wetgewing voorgeskryf word;
- (b) op die provinsie se segment van die nasionale gemeenskaplike kieserslys gebaseer is;
- (c) vir 'n minimum stemoouderdom van 18 jaar voorsiening maak; en
- (d) in die algemeen, proporsionele verteenwoordiging tot gevolg het.

Lidmaatskap van Provinsiale Wetgewer

10. (1) Elke burger wat bevoeg is om vir die Nasionale Vergadering te stem, is bevoeg om 'n lid van die Provinsiale Wetgewer te wees, uitgesonderd —

- (a) iemand wat aangestel is deur, of in diens is van, die staat en vergoeding vir dié aanstelling of diens ontvang, behalwe —
 - (i) die Premier en ander lede van die Uitvoerende Raad van KwaZulu-Natal; en
 - (ii) ander ampsdraers wie se funksies met die funksies van 'n lid van die Provinsiale Wetgewer bestaanbaar is en deur nasionale wetgewing verklaar is met dié funksies bestaanbaar te wees;
- (b) lede van die Nasionale Vergadering, vaste afgevaardigdes na die Nasionale Raad van Provinsies of lede van 'n Munisipale Raad;
- (c) ongerehabiliteerde insolvente;
- (d) iemand wat deur 'n hof van die Republiek as geestelik gekrenk verklaar is; of
- (e) iemand wat, na 3 Februarie 1997, binne die Republiek aan 'n misdryf skuldig is of skuldig bevind word, of buite die Republiek aldus skuldig is of skuldig bevind word indien die optrede wat die misdryf uitmaak binne die Republiek 'n misdryf sou uitmaak, en tot meer as 12 maande gevangenisstraf sonder die keuse van 'n boete gevonnissen is, maar niemand word as gevonnissen beskou voordat 'n appèl teen die skuldigbevinding of vonnis beslis is, of voordat die tyd om appèl aan te teken, verstryk het nie. 'n Onbevoegdheid kragtens hierdie paragraaf verstryk vyf jaar nadat die vonnis voltooi is.

- (2) Iemand wat ingevolge subartikel (1)(a) of (b) onbevoeg is om 'n lid van die Provinsiale Wetgewer te wees, kan 'n kandidaat vir die Provinsiale Wetgewer wees behoudens enige beperkings of voorwaardes wat deur nasionale wetgewing voorgeskryf word.

(3) Iemand verloor lidmaatskap van die Provinsiale Wetgewer indien so iemand —

- (a) ophou om bevoeg te wees;
- (b) as lid bedank; of
- (c) sonder toestemming van die Provinsiale Wetgewer afwesig is in omstandighede waarvoor die reëls en orders verlies van lidmaatskap voorskryf.

- (4) Vakatures in die Provinsiale Wetgewer moet ingevolge nasionale wetgewing gevul word.

Eed of plegtige verklaring van lede van Provinsiale Wetgewer

- 11. Voordat lede van die Provinsiale Wetgewer begin om hul funksies as lede te verrig, moet hulle ooreenkomstig item 1 van Bylae 1 'n eed of plegtige verklaring van trou aan die Republiek en KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet aflê.

Duur van Provinsiale Wetgewer

12. (1) Die Provinsiale Wetgewer word vir 'n termyn van vyf jaar verkies.

- (2) (a) Indien die Provinsiale Wetgewer ontbind word ingevolge artikel 13 of wanneer sy termyn verstryk, moet die Premier by proklamasie 'n verkiesing uitskryf en datums daarvoor bepaal, en die verkiesing moet gehou word binne 90 vanaf die datum waarop die Provinsiale Wetgewer ontbind is of sy termyn verstryk het.
- (b) 'n Proklamasie waarby 'n verkiesing uitgeskryf en datums daarvoor bepaal word, kan voor of na die termyn van die Provinsiale Wetgewer verstryk het, uitgereik word.
- (3) Indien die uitslag van 'n verkiesing van die Provinsiale Wetgewer nie binne die tydperk in artikel 109 van die nasionale Grondwet genoem, bekend gemaak word nie, of indien 'n verkiesing deur 'n hof tersyde gestel word, moet 'n ander verkiesing ingevolge artikel 108(3) van die nasionale Grondwet gehou word.

- (4) Die Provinsiale Wetgewer bly bevoeg om te funksioneer vandat dit ontbind het of die termyn daarvan verstryk het tot op die dag voor die eerste dag waarop die stemming vir die volgende Provinsiale Wetgewer plaasvind.

Ontbinding van Provinsiale Wetgewer voor verstryking van termyn

13. (1) Die Premier moet die Provinsiale Wetgewer ontbind indien —

- (a) die Provinsiale Wetgewer 'n besluit om te ontbind met 'n ondersteunende stem van die meerderheid van al sy lede aangenem het; en
- (b) drie jaar verstryk het sedert die Provinsiale Wetgewer verkies is.

- (2) 'n Waarnemende Premier moet die Provinsiale Wetgewer ontbind indien daar 'n vakature in die amp van Premier is en die Provinsiale Wetgewer in gebreke bly om binne 30 dae nadat die vakature ontstaan het 'n nuwe Premier te kies.

Sittings en resesse van Provinsiale Wetgewer

14. (1) Die eerste sitting van die Provinsiale Wetgewer na 'n verkiesing vind plaas op 'n tyd en datum wat deur 'n Regter, wat deur die Hoofregter aangewys word, bepaal word, maar nie later nie as 14 dae nadat die verkiesingsuitslag bekend gemaak is.

(2) Die Provinsiale Wetgewer kan die tyd en duur van sy ander sittings en resesse bepaal.

(3) Die Premier kan die Provinsiale Wetgewer te eniger tyd vir 'n buitengewone sitting byeenroep om spesiale of dringende werksaamhede te verrig.

(4) Die Provinsiale Wetgewer kan bepaal waar hy, en enige van sy komitees, normaalweg hul sittings sal hou.

Speaker van Provinsiale Wetgewer

15. (1) Die Provinsiale Wetgewer moet by die eerste sitting na sy verkiesing, of wanneer dit nodig is om 'n vakature te vul, 'n Speaker uit sy geledere kies.

(2) (a) 'n Regter deur die Hoofregter aangewys, moet by die verkiesing van die Speaker voorsit.

(b) Die prosedure in Bylae 2 van hierdie Grondwet uiteengesit, is op die verkiesing van die Speaker van toepassing.

(3) Die Provinsiale Wetgewer kan —

(a) 'n Adjunkspeaker uit eie geledere kies; en

(b) ander voorsittende beamptes uit eie geledere kies om die Speaker en Adjunkspeaker by te staan.

(4) (a) Die Provinsiale Wetgewer kan die Speaker, Adjunkspeaker en enige ander voorsittende beampte by wyse van besluit van die amp onthef.

(b) 'n Meerderheid van die lede van die Provinsiale Wetgewer moet teenwoordig wees wanneer die besluit aangeneem word.

Kworum en besluite van Provinsiale Wetgewer

16. (1) Behalwe waar hierdie Grondwet anders bepaal —

(a) moet 'n meerderheid van die lede van die Provinsiale Wetgewer teenwoordig wees voordat 'n stemming oor 'n Wetsontwerp of die wysiging van 'n Wetsontwerp gehou kan word;

(b) moet minstes een derde van die lede teenwoordig wees voordat 'n stemming oor enige ander vraag wat voor die Provinsiale Wetgewer dien, geneem kan word; en

(c) word alle vrae wat voor die Provinsiale Wetgewer dien, beslis deur 'n meerderheid van die stemme wat uitgebring word.

(2) Die lid wat op 'n vergadering van die Provinsiale Wetgewer voorsit, het nie 'n beraadslagende stem nie, maar —

(a) moet 'n beslissende stem uitbring wanneer daar 'n staking van stemme oor 'n vraag is; en

(b) kan 'n beraadslagende stem uitbring wanneer 'n vraag beslis moet word met 'n ondersteunende stem van minstens twee derdes van die lede van die Provinsiale Wetgewer.

Bevoegdhede van Provinsiale Wetgewer

17. (1) In die uitoefening van sy wetgewende gesag kan die Provinsiale Wetgewer —

(a) enige Wetsontwerp oorweeg, aanneem, wysig of verwerp wat voor hom dien; en

(b) wetgewing, behalwe Geldwetsontwerpe, inisieer of opstel.

(2) Behoudens subartikel (4), moet die Provinsiale Wetgewer voorsiening maak vir meganismes om —

(a) te verseker dat alle provinsiale staatsorgane aan hom verantwoording doen; en

(b) toesig te hou oor —

(i) die uitoefening van provinsiale uitvoerende gesag, met inbegrip van die uitvoering van wetgewing; en

(ii) enige provinsiale staatsorgaan.

(3) Die Provinsiale Wetgewer kan —

(a) sy eie interne reëlings, verrigtinge en prosedures bepaal en beheer; en

(b) reëls en orders betreffende sy werksaamhede maak, met behoorlike inagneming van verteenwoordigende en deelnemende demokrasie, verantwoordbaarheid, deursigtigheid en openbare deelname.

(4) Die Provinsiale Wetgewer moet in sy reëls en orders voorsiening maak vir —

- (a) die instelling, samestelling, bevoegdhede, funksies, prosedures en duur van sy komitees;
- (b) die deelname van minderheidspartye, wat in die Provinsiale Wetgewer verteenwoordig is, aan die verrigtinge van die Provinsiale Wetgewer en sy komitees op 'n wyse wat met die demokrasie bestaanbaar is;
- (c) die opdra aan sy komitees van sodanige bevoegdhede wat hulle in staat stel om hul mandaat uit te voer;
- (d) koördinasie tussen die Provinsiale Wetgewer en sy komitees, en die Nasionale Raad van Provinsies;
- (e) die ontvangs van petisies, versoë of voorleggings van enige belanghebbende persoon of instelling; en
- (f) finansiële en administratiewe bystand aan elke party wat in die Provinsiale Wetgewer verteenwoordig is, in verhouding tot sy verteenwoordiging, ten einde die party en sy leier in staat te stel om hulle funksies in die Provinsiale Wetgewer doeltreffend te verrig.

Leier van Opposisie in Provinsiale Wetgewer

18. Die reëls en orders van die Provinsiale Wetgewer moet voorsiening maak vir die erkenning van die Leier van die Opposisie in die Provinsiale Wetgewer.

Getuienis of inligting voor Provinsiale Wetgewer

19. Die Provinsiale Wetgewer of enige van sy komitees kan —

- (a) enige persoon dagvaar om voor hom te verskyn om onder eed of plegtige verklaring getuienis af te lê, of om dokumente voor te lê;
- (b) van enige natuurlike of regspersoon of provinsiale staatsorgaan vereis om aan hom verslag te doen;
- (c) ingevolge provinsiale wetgewing of die reëls en orders van die Provinsiale Wetgewer enige persoon of provinsiale staatsorgaan verplig om aan 'n dagvaardiging of vereiste ingevolge paragraaf (a) of (b) te voldoen; en
- (d) van enige belanghebbende persoon of instelling petisies, versoë of voorleggings ontvang.

Privilegie van lede van Provinsiale Wetgewer en vaste afgevaardigdes van KwaZulu-Natal na Nasionale Raad van Provinsies

20. Lede van die Provinsiale Wetgewer en die vaste afgevaardigdes van KwaZulu-Natal na die Nasionale Raad van Provinsies —

- (a) het, behoudens die Provinsiale Wetgewer se reëls en orders, vryheid van spraak in die Provinsiale Wetgewer en in sy komitees; en
- (b) is nie blootgestel aan siviele of strafregtelike verrigtinge, inhegtenisneming, gevangesetting of skadevergoeding weens —
 - (i) enigiets wat hulle in of voor of aan die Provinsiale Wetgewer of enige van sy komitees gesê, blootgelê of voorgelê het nie; of
 - (ii) enigiets wat aan die lig gebring is as gevolg van enigiets wat hulle in of voor of aan die Provinsiale Wetgewer of enige van sy komitees gesê, blootgelê of voorgelê het nie.

Openbare toegang tot verrigtinge van Provinsiale Wetgewer

21. (1) Die verrigtinge van die Provinsiale Wetgewer en sy komitees vind in die openbaar plaas, maar redelike maatreëls kan getref word om —

- (a) openbare toegang, met inbegrip van toegang aan die media, tot die Provinsiale Wetgewer en sy komitees te reguleer; en
 - (b) voorsiening te maak vir die deursoeking van enige persoon en, waar dit gepas is, die weiering van toegang aan, of die verwydering van, enige persoon.
- (2) Die publiek, met inbegrip van die media, mag nie van 'n sitting van 'n komitee van die Provinsiale Wetgewer uitgesluit word nie, tensy dit in 'n oop en demokratiese gemeenskap redelik en regverdigbaar is om dit te doen.
- (3) Die Provinsiale Wetgewer moet openbare deelname aan sy aktiwiteite en dié van sy komitees vergemaklik.

Indiening van Wetsontwerpe by Provinsiale Wetgewer

22. (1) Slegs 'n lid van die Uitvoerende Raad, 'n komitee of 'n lid van die Provinsiale Wetgewer kan 'n Wetsontwerp by die Provinsiale Wetgewer indien.
- (2) Indien die Wetsontwerp 'n Geldwetsontwerp is, mag slegs die lid van die Uitvoerende Raad verantwoordelik vir finansiële sake dit by die Provinsiale Wetgewer indien.

Geldwetsontwerpe

23. (1) 'n Wetsontwerp is 'n Geldwetsontwerp indien dit —

- (a) geld bewillig;
 - (b) provinsiale belasting, heffings, regte of bobelastings oplê;
 - (c) enige provinsiale belasting, heffings, regte of bobelasting afskaf of verminder, of vrystelling daarvan verleen; of
 - (d) 'n regstreekse las teen 'n Provinsiale Inkomstefonds magtig.
- (2) 'n Geldwetsontwerp mag met geen ander aangeleentheid handel nie, behalwe —
- (a) 'n ondergeskikte aangeleentheid wat verband hou met die bewilliging van geld;
 - (b) die oplegging, afskaffing of vermindering van provinsiale belasting, heffings, regte of bobelasting;
 - (c) die verlening van vrystelling van provinsiale belasting, heffings, regte of bobelasting; of

- (d) die magtiging van regstreekse laste teen 'n Provinsiale Inkomstefonds.
- (3) 'n Provinsiale Wet moet voorsiening maak vir 'n prosedure waarvolgens die Provinsiale Wetgewer 'n Geldwetsontwerp kan wysig.

Bekragtiging van Wetsontwerpe deur Premier

24. (1) Die Premier van KwaZulu-Natal moet binne 45 dae nadat 'n Wetsontwerp deur die Provinsiale Wetgewer aangeneem is —
- die Wetsontwerp bekragtig en onderteken; of
 - indien die Premier voorbehoude omtrent die grondwetlikheid van die Wetsontwerp het, dit na die Provinsiale Wetgewer vir heroorweging terugverwys.
- (2) Indien die Wetsontwerp, na heroorweging, ten volle aan die Premier se voorbehoude voldoen, moet die Premier die Wetsontwerp bekragtig en onderteken; indien nie, moet die Premier —
- die Wetsontwerp bekragtig en onderteken; of
 - dit na die Konstitusionele Hof vir 'n beslissing oor die grondwetlikheid daarvan verwys.
- (3) Indien die Konstitusionele Hof beslis dat die Wetsontwerp grondwetlik is, moet die Premier dit binne 14 dae bekragtig en onderteken.

Publikasie en inwerkingtreding van provinsiale Wette

25. (1) 'n Wetsontwerp wat deur die Premier bekragtig en onderteken is, word 'n Wet van KwaZulu-Natal.
- (2) Dit moet onverwyld in die amptelike koerant van die provinsie gepubliseer word en tree in werking by publikasie daarvan of op 'n datum ingevolge die Wet bepaal.
- (3) Provinsiale wetgewing kan vir die verspreiding en verdere publikasie van besonderhede van provinsiale Wette voorsiening maak.

Veilige bewaring van provinsiale Wette

26. (1) Die ondertekende eksemplaar van 'n Wet is afdoende bewys van die bepalings daarvan.
- (2) Na publikasie moet die Wet aan die Konstitusionele Hof vir veilige bewaring toevertrou word.

HOOFTUK 3

PROVINSIALE UITVOERENDE GESAG

Uitvoerende gesag

27. (1) Die uitvoerende gesag in KwaZulu-Natal berus by die Premier.
- (2) Die Premier oefen die uitvoerende gesag gesamentlik met die ander lede van die Uitvoerende Raad uit deur —
- provinsiale wetgewing uit te voer;
 - behalwe waar die nasionale Grondwet of 'n Parlements wet anders bepaal, alle nasionale wetgewing binne die funksionele terreine in Bylae 4 of 5 van die nasionale Grondwet gelys, uit te voer in die mate dat KwaZulu-Natal die administratiewe vermoë het om doeltreffende verantwoordelikheid te aanvaar;
 - nasionale wetgewing buite die funksionele terreine in Bylae 4 en 5 van die nasionale Grondwet gelys, uit te voer indien die administrasie daarvan ingevolge 'n Parlements wet aan die Uitvoerende Raad opgedra is;
 - provinsiale beleid te ontwikkel en uit te voer;
 - die funksies van die provinsiale administrasie en sy departemente te koördineer;
 - provinsiale wetgewing op te stel en te inisieer; en
 - enige ander funksie te verrig wat ingevolge die nasionale Grondwet of 'n Parlements wet aan die Uitvoerende Raad opgedra is.
- (3) Die provinsiale uitvoerende gesag moet ooreenkomstig die nasionale Grondwet en hierdie Grondwet handel.

Setel van Provinsiale Uitvoerende Gesag

28. Die Provinsiale Uitvoerende Gesag kan bepaal waar hy, en enige van sy komitees, normaalweg of in enige besondere geval, sal sit.

Opdra van funksies aan Munisipale Rade

29. (1) 'n Lid van die Uitvoerende Raad kan enige bevoegdheid of funksie, wat ingevolge 'n Parlements wet of provinsiale Wet uitgeoefen of verrig moet word, aan 'n Munisipale Raad opdra.
- (2) 'n Opdrag —
- geskied ingevolge 'n ooreenkoms tussen die betrokke lid van die Uitvoerende Raad en die Munisipale Raad;
 - moet met die Wet, ingevolge waarvan die betrokke bevoegdheid funksie uitgeoefen of verrig word, bestaanbaar wees; en
 - tree by proklamasie deur die Premier in die amptelike koerant van die provinsie in werking.

Bevoegdhede en funksies van Premier

30. Die Premier het die bevoegdhede en funksies wat deur die nasionale Grondwet, hierdie Grondwet en enige wetgewing aan daardie amp toevertrou is.

Verkiesing van Premier

31. (1) By sy eerste sitting na sy verkiesing, en wanneer dit nodig is om 'n vakature te vul, moet die Provinsiale Wetgewer 'n Premier uit sy geledere kies.
- (2) 'n Regter wat deur die Hoofregter aangewys is, moet by die verkiesing van die Premier voorsit.
- (3) Die prosedure in Bylae 2 van hierdie Grondwet uiteengesit, is op die verkiesing van die Premier van toepassing.
- (4) 'n Verkiesing om 'n vakature in die amp van Premier te vul, moet gehou word op 'n tyd en datum deur die Hoofregter bepaal, maar nie later nie as 30 dae nadat die vakature ontstaan.

Aanvaarding van amp deur Premier

32. Die aangewese Premier aanvaar die amp binne vyf dae na die Premiersverkiesing, deur ooreenkomstig item 2 van Bylae 1 'n eed of plegtige verklaring van trou aan die Republiek en KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet en hierdie Grondwet af te lê.

Ampstermyn en ontheffing van Premier

33. (1) 'n Premier se ampstermyn begin by ampsaanvaarding en eindig wanneer 'n vakature ontstaan of wanneer die persoon wat volgende tot Premier verkies word, die amp aanvaar.
- (2) Niemand mag die amp van Premier vir meer as twee termyne beklee nie, maar wanneer iemand verkies word om 'n vakature in die amp van Premier te vervul, word die tydperk tussen daardie verkiesing en die volgende verkiesing van 'n Premier nie as 'n ampstermyn beskou nie.
- (3) Die Provinsiale Wetgewer kan, by wyse van 'n besluit wat met die ondersteunende stem van minstens twee derdes van sy lede geneem word, die Premier van sy amp onthef slegs op grond van —
- (a) 'n ernstige skending van die nasionale Grondwet, hierdie Grondwet of die reg;
- (b) ernstige wangedrag; of
- (c) onvermoë om die funksies van die amp te verrig.
- (4) Iemand wat ingevolge subartikel (3)(a) of (b) van die amp van Premier onthef is, mag geen voordele van daardie amp ontvang nie, en mag in geen openbare amp dien nie.

Waarnemende Premier

34. (1) Wanneer die Premier afwesig is of andersins nie in staat is om die pligte van die amp van Premier te verrig nie, of gedurende 'n vakature in die amp van Premier, neem 'n ampsdraer in die onderstaande rangorde as Premier waar —
- (a) 'n Lid van die Uitvoerende Raad wat deur die Premier aangewys is;
- (b) 'n Lid van die Uitvoerende Raad wat deur die ander lede van die Uitvoerende Raad aangewys is; of
- (c) die Speaker, totdat die Provinsiale Wetgewer een van sy ander lede aanwys.
- (2) 'n Waarnemende Premier het die verantwoordelikhede, bevoegdhede en funksies van die Premier.
- (3) Voordat die Waarnemende Premier die verantwoordelikhede, bevoegdhede en funksies van die Premier aanvaar, moet die Waarnemende Premier ooreenkomstig item 2 van Bylae 1 'n eed of plegtige verklaring van trou aan die Republiek en KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet en hierdie Grondwet aflê.

Samestelling en aanvaarding van Uitvoerende Raad

35. (1) Die Uitvoerende Raad bestaan uit die Premier, as hoof van die Uitvoerende Raad, en —
- (a) minstens agt en hoogstens 12 lede van die Uitvoerende Raad wat deur die Premier uit die geledere van die Provinsiale Wetgewer aangestel word; en
- (b) een bykomende lid van die Uitvoerende Raad wat bevoeg is om 'n lid van die Provinsiale Wetgewer te wees, maar nie een is nie: Met dien verstande dat die Premier die aanstelling van sodanige bykomende lid van die Uitvoerende Raad gerade ag.
- (2) Die Premier stel die lede van die Uitvoerende Raad aan, dra hulle funksies en bevoegdhede aan hulle op, en kan hulle ontslaan.

Aanspreeklikheid en verantwoordelikhede van lede van Uitvoerende Raad

36. (1) Die lede van die Uitvoerende Raad is verantwoordelik vir die funksies van die uitvoerende gesag wat deur die Premier aan hulle opgedra word.
- (2) Lede van die Uitvoerende Raad is gesamentlik en afsonderlik teenoor die Provinsiale Wetgewer verantwoordbaar vir die wyse waarop hulle hulle bevoegdhede uitoefen en funksies verrig.
- (3) Lede van die Uitvoerende Raad moet —
- (a) ooreenkomstig die nasionale Grondwet en hierdie Grondwet handel; en
- (b) die Provinsiale Wetgewer van volledige en gereelde verslae oor aangeleenthede onder hulle beheer voorsien.
- (4) Die lid van die Uitvoerende Raad in artikel 35(1)(b) bedoel —
- (a) kan in die Provinsiale Wetgewer sitting neem, daarin praat, en is geregtig op die privilege soos in artikel 20 van hierdie Grondwet uiteengesit;
- (b) mag nie in die Provinsiale Wetgewer stem nie.

Voortbestaan van Uitvoerende Raad na verkiesings

37. Wanneer 'n verkiesing van die Provinsiale Wetgewer gehou word, bly die Uitvoerende Raad en sy lede bevoeg om te funksioneer totdat die persoon wat wat deur die volgende Provinsiale Wetgewer tot Premier verkies is, dié amp aanvaar.

Eed of plegtige verklaring van lede van Uitvoerende Raad

38. Voordat lede van die Uitvoerende Raad begin om hul funksies te verrig, moet hulle ooreenkomstig item 2 van Bylae 1 'n eed of plegtige verklaring van trou aan die Republiek en KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet en hierdie Grondwet aflê.

Gedrag van lede van Uitvoerende Raad

39. (1) Lede van die Uitvoerende Raad moet optree ooreenkomstig die etiese kode deur nasionale wetgewing voorgeskryf.

(2) Lede van die Uitvoerende Raad mag nie —

- (a) enige ander betaalde werk onderneem nie;
- (b) optree op enige wyse wat met hul amp onbestaanbaar is, of hulself blootstel aan enige omstandigheid wat die risiko inhou van 'n botsing tussen hul amptelike verantwoordelikhede en hul private belange nie; of
- (c) hul posisie of enige inligting aan hul toevertrou, gebruik om hulself te verryk of enige ander persoon onbehoorlik te bevoordeel nie.

Oordrag van funksies aan lid van Uitvoerende Raad

40. Die Premier kan by proklamasie in die amptelike koerant van die provinsie aan 'n lid van die Uitvoerende Raad —

- (a) die administrasie oordra van enige wetgewing wat aan 'n ander lid opgedra is; of
- (b) enige bevoegdheid of funksie oordra wat by wetgewing aan 'n ander lid opgedra is.

Tydlike opdra van funksies aan lid van Uitvoerende Raad

41. Die Premier kan aan 'n lid van die Uitvoerende Raad enige bevoegdheid of funksie van 'n ander lid wat wat uit die amp afwesig is of nie in staat is om daardie bevoegdheid uit te oefen of daardie funksie te verrig nie, tydelik opdra.

Mosies van wantroue in Uitvoerende Raad of Premier

- 42. (1) Indien die Provinsiale Wetgewer by wyse van 'n besluit waarvan al sy lede stem, 'n voorstel van wantroue in die Uitvoerende Raad, uitgesonderd die Premier, aanneem, moet die Premier die Uitvoerende Raad hersaamstel.
- (2) Indien die Provinsiale Wetgewer by wyse van 'n besluit ten gunste waarvan 'n meerderheid van al sy lede stem, 'n voorstel van wantroue in die Premier aanneem, moet die Premier en die ander lede van die Uitvoerende Raad bedank.

HOOFSTUK 4**TRADISIONELE MONARG****Status, erkenning, instelling en amp van Monarg**

- 43. (1) Daar is 'n Monarg vir die provinsie KwaZulu-Natal.
- (2) Die persoon wat tans die amp van die Koning van die Zoeloe-volk, die Koning van *AmaZulu*, die *Ingonyama* of *Isilo* beklee, word, by die inwerkingtreding van hierdie Grondwet, as die Monarg van die provinsie KwaZulu-Natal beskou.
- (3) Voordat die Monarg die amp ingevolge hierdie Grondwet aanvaar, moet die Monarg, by 'n spesiale plegtigheid wat vir hierdie doel toegewy is, ooreenkomstig item 3 van Bylae 1 'n eed of plegtige verklaring van trou aan die Republiek van Suid-Afrika en die Provinsie KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet en hierdie Grondwet aflê.
- (4) (a) Provinsiale wetgewing en gewoontereg moet die verhouding bepaal tussen die Monarg en —
 - (i) die Provinsiale Huis van Tradisionele Leiers; en
 - (ii) *Amakhosi* in die provinsie.
- (b) Die Monarg moet alles wat op die amp van die Monarg betrekking het ooreenkomstig die nasionale Grondwet, hierdie Grondwet, provinsiale wetgewing en gewoontereg uitvoer.
- (5) Die Monarg kan deur die Uitvoerende Raad geraadpleeg word oor enige aangeleentheid wat op die regering van die provinsie betrekking het.

Opvolging van amp van Monarg

- 44. (1) Die instelling van die Monargie, soos kragtens die nasionale Grondwet en hierdie Grondwet erken, geskied volgens erfopvolging met betrekking tot die amp van Monarg en word bepaal deur —
 - (a) die gewoontereg van toepassing op die instelling van die Monargie van *AmaZulu*; of
 - (b) provinsiale wetgewing wat na die inwerkingtreding van hierdie Grondwet aangeneem word.
- (2) (a) 'n vakature in die amp van die Monarg veroorsaak deur dood of abdikasie moet, behoudens artikel 45(1)(a), so gou doenlik gevul word in ooreenstemming met —
 - (i) die gewoontereg bedoel in artikel 44(1)(a); of
 - (ii) provinsiale wetgewing bedoel in artikel 44(1)(b).
- (b) behoudens provinsiale wetgewing bedoel in artikel 44(1)(b) —

- (i) moet die Koninklike Familie die besonderhede van die persoon aan die Premier meedeel wat as opvolger van die amp van die Monarg geïdentifiseer is deur die gewoontereg van toepassing op die instelling van die Monarg van *AmaZulu*; en
- (ii) moet die Premier 'n kennisgewing vir algemene inligting in die amptelike koerant van die provinsie publiseer waarin verklaar word wie sodanig as opvolger van die amp van die Monarg geïdentifiseer is.

Identifisering en aanwysing van Regent

45. (1) Indien die Monarg —

- (a) jonger as 21 jaar is, of in die geval van die dood of onbevoegdheid van die Monarg; of
- (b) afwesig is van KwaZulu-Natal vir 'n beduidende tydperk,

kan die rol, verantwoordelikhede en funksies van die Monarg, behoudens gewoontereg of provinsiale wetgewing bedoel in 44(1)(b), uitgeoefen word deur 'n Regent aangewys ingevolge 45(2).

(2) In die omstandighede uiteengesit in —

- (a) subartikel (1)(a), moet die Regent ooreenkomstig gewoontereg geïdentifiseer word en moet die Koninklike Familie die besonderhede van die persoon wat sodanig as Regent geïdentifiseer is so gou doenlik aan die Premier meedeel; of
 - (b) subartikel (1)(b), moet die Monarg 'n Regent in oorleg met sy koninklike adviseurs en in ooreenstemming met gewoontereg aanwys en moet die Monarg die besonderhede van die persoon wat sodanig as Regent aangewys is so gou doenlik aan die Premier meedeel.
- (3) Behoudens provinsiale wetgewing bedoel in 44(1)(b), moet die Premier 'n kennisgewing in die amptelike koerant van die provinsie publiseer waarin verklaar word wie as Regent ingevolge artikel 45(2) geïdentifiseer of aangewys is.
- (4) Voor ampsaanvaarding moet 'n Regent, by 'n spesiale plegtigheid wat vir hierdie doel toegewy is, ooreenkomstig item 3 van Bylae 1 'n eed of plegtige verklaring van trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet en hierdie Grondwet aflê.
- (5) (a) Die Regentskap word ingevolge hierdie Grondwet en in die naam van die Monarg uitgeoefen.
- (b) Behoudens provinsiale wetgewing bedoel in artikel 44(1)(b), word die Regentskap wat ingevolge hierdie artikel uitgeoefen word, beëindig op die datum voor die datum —
- (i) van publikasie van 'n kennisgewing bedoel in artikel 44(2)(b)(ii);
 - (ii) waarop die Monarg 21 word;
 - (iii) waarop die Monarg nie langer onbevoeg is nie; of
 - (iv) van die Monarg se terugkeer na KwaZulu-Natal.
- (6) Behoudens provinsiale wetgewing bedoel in artikel 44(1)(b), ontvang 'n Regent die vergoeding en voordele soos deur die Provinsiale Wetgewer in elke geval bepaal mag word.

Rol, verantwoordelikhede, bevoegdhede en funksies van Monarg

46. (1) Die Monarg moet —

- (a) die nasionale Grondwet, hierdie Grondwet en die wette van KwaZulu-Natal handhaaf;
 - (b) die unieke en diverse erfenis en kultuur van die mense van KwaZulu-Natal erken;
 - (c) daarna streef om 'n simbool van eenheid vir die mense van KwaZulu-Natal te verteenwoordig; en
 - (d) vrede, stabiliteit en nasiebou bevorder.
- (2) Die Monarg verrig daardie bevoegdhede, verantwoordelikhede en funksies wat aan hom of haar toegewys of opgedra is deur —
- (a) hierdie Grondwet;
 - (b) gewoontereg;
 - (c) nasionale wetgewing, met inbegrip van die verantwoordelikhede en funksies wat algemeen of in die besonder aan 'n koning of koningin toegewys of opgedra word by regulasie uitgevaardig ingevolge toepaslike nasionale raamwerkwetgewing betreffende tradisionele leierskap en regering; en
 - (d) provinsiale wetgewing.
- (3) Die Monarg kan, bykomend tot enige tradisionele of seremoniële rol, verantwoordelikhede of funksies aan hom toegewys of opgedra, of by regulasie uitgevaardig ingevolge toepaslike nasionale raamwerkwetgewing betreffende tradisionele leierskap en regering —
- (a) behoudens die reëls en orders van die Provinsiale Wetgewer, sessies van die Provinsiale Wetgewer open of toespreek;
 - (b) behoudens 'n besluit van die Provinsiale Huis van Tradisionele Leiers, sessies van die Provinsiale Huis van Tradisionele Leiers open of toespreek;
 - (c) behoudens 'n besluit van die Uitvoerende Raad en enige voorskrif of voorwaarde wat deur die Uitvoerende Raad opgelê is —
 - (i) eerbewyse en onderskeidings toeken;
 - (ii) buitelandse hooggeplaastes ontmoet; of
 - (iii) KwaZulu-Natal kultureel en maatskaplik beide binne die Republiek van Suid-Afrika en oorsee verteenwoordig;

- (d) behoudens 'n besluit van die Uitvoerende Raad, sessies of vergaderings van 'n provinsiale of inter-regeringsliggaam open of toespreek;
 - (e) behoudens 'n besluit van 'n Munisipale Raad, sessies van 'n Munisipale Raad open of toespreek; en
 - (f) behoudens 'n besluit van 'n Plaaslike Huis van Tradisionele Leiers, sessies van die Plaaslike Huis van Tradisionele Leiers open of toespreek.
- (4) As 'n simbool van eenheid vir die mense van KwaZulu-Natal mag die Monarg nie —
- (a) aan partypolitieke aktiwiteite deelneem nie
 - (b) enige identifisering met, ondersteuning van, of teenkanting teen enige politieke party verkondig nie.

Onderlinge oorleg met Monarg

47. Die Provinsiale Wetgewer en die Uitvoerende Raad kan onderlinge oorleg en betrekkinge vergemaklik tussen die Monarg en —
- (a) die Provinsiale Wetgewer;
 - (b) die Uitvoerende Raad; en
 - (c) Munisipale Rade.

Siviele Lys van Monarg

48. (1) Daar is 'n Siviele Lys van die Monarg.
- (2) Die Siviele Lys van die Monarg —
- (a) verteenwoordig 'n toelaag wat deur die Provinsiale Regering betaal word om voorsiening te maak vir die onderhoud en uitgawes van die Koninklike Huishouding; en
 - (b) moet jaarliks ingevolge 'n bewilliging deur 'n Wet van die Provinsiale Wetgewer goedgekeur word.
- (3) Die Premier, of 'n lid van die Uitvoerende Raad deur die Premier aangewys, is as uitvoerende gesag verantwoordelik vir die administrasie van die Siviele Lys van die Monarg en moet 'n rekenpligtige amptenaar in die provinsiale departement aanstel om na die administrasie en bestuur van die Siviele Lys van die Monarg om te sien ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 of 1999).

HOOFSTUK 5

PROVINSIALE ADMINISTRASIE

Hoofkantoor van provinsiale administrasie

49. (1) Die Premier, tesame met ander die lede van die Uitvoerende Raad, kan die provinsiale hoofkantoor van die provinsiale administrasie van die KwaZulu-Natal regering vasstel.
- (2) Met die doel om effektiewe en doeltreffende dienslewering te verseker, kan die Premier, tesame met die verantwoordelike lid van die Uitvoerende Raad, bepaal of voorskryf dat die hoof van 'n provinsiale departement 'n satelliet- of streekkantoor op enige geskikte plek in die provinsie instel en in stand hou.

HOOFSTUK 6

ALGEMENE BEPALINGS

Oorgangsreëlings

50. Bylae 3 is van toepassing op die oorgang na die nuwe grondwetlike bestel in KwaZulu-Natal wat deur hierdie Grondwet ingestel word en op aangeleenthede wat met dié oorgang in verband staan.

Kort titel en inwerkingtreding

51. (1) Hierdie Wet heet die Grondwet van KwaZulu-Natal, 2004, en tree in werking op 'n datum wat deur die Premier by proklamasie in die amptelike koerant van die provinsie bepaal word.
- (2) Die Premier kan verskillende datums bepaal vir die inwerkingtreding van verskillende bepalings van hierdie Grondwet.
- (3) Tensy uit die samehang anders blyk, word 'n verwysing in 'n bepaling van hierdie Grondwet na 'n tydstop waarop hierdie Grondwet in werking getree het, uitgelê as 'n verwysing na 'n tydstop waarop die bepaling in werking getree het.

BYLAE 1

AMPSEDE EN PLEGTIGE VERKLARINGS

(Artikels 11, 32, 34(3), 38, 43(3) en 45(4))

Eed of plegtige verklaring van lede van Provinsiale Wetgewer

1. (1) Lede van die Provinsiale Wetgewer moet voor die Hoofregter of 'n Regter deur die Hoofregter aangewys, soos volg 'n eed aflê of plegtig verklaar:

Ek, A.B., sweer/verklaar plegtig trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal en dat ek die nasionale Grondwet, die Provinsiale Grondwet en alle ander reg van die Republiek sal gehoorsaam, eerbiedig en handhaaf, en belowe plegtig om my funksie as 'n lid van die Provinsiale Wetgewer na my beste vermoë te verrig.

(In die geval van 'n eed: *So help my God.*)

- (2) Persone wat 'n vakature in die Provinsiale Wetgewer vul, kan ingevolge sub-item 1 voor die voorsittende beampete van die Provinsiale Wetgewer 'n eed/plegtige verklaring aflê.

Eed of plegtige verklaring van Premier, Waarnemende Premier en lede van die Uitvoerende Raad

2. Die Premier of Waarnemende Premier van die provinsie en elke lid van die Uitvoerende Raad moet voor die Hoofregter of 'n Regter deur die Hoofregter aangewys, soos volg 'n eed aflê of plegtig verklaar:

Ek, A.B., sweer/verklaar plegtig trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal en dat ek die nasionale Grondwet, Provinsiale Grondwet en alle ander reg van die Republiek sal gehoorsaam, en ek onderneem om my amp as Premier/Waarnemende Premier/lid van die Uitvoerende Raad met eer en waardigheid te beklee, om 'n opregte en getroue raadslid te wees, geen saak wat aan my vir geheimhouding toevertrou word, regstreeks of onregstreeks te openbaar nie, en die funksie van my amp met nougesetheid en na my beste vermoë te verrig.

(In die geval van 'n eed: *So help my God.*)

Eed of plegtige verklaring van Monarg of Regent

3. Die Monarg of Regent moet voor die Hoofregter of 'n Regter deur die Hoofregter aangewys, soos volg 'n eed aflê of plegtig verklaar:

Ek, A.B., sweer/verklaar plegtig trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal en dat ek die nasionale Grondwet, die Provinsiale Grondwet en alle ander reg van die Republiek sal gehoorsaam, eerbiedig en handhaaf, en ek onderneem om my amp as Monarg/Regent van die Monarg van KwaZulu-Natal met eer en waardigheid te beklee, die unieke en diverse erfenis en kultuur van die mense van KwaZulu-Natal te erken, daarna te streef om 'n simbool van eenheid vir die mense van KwaZulu-Natal te verteenwoordig, en vrede, stabiliteit en nasiebou te bevorder; nie op enige wyse aan partypolitieke aktiwiteite deel te neem nie; geen saak wat aan my vir geheimhouding toevertrou word, regstreeks of onregstreeks te openbaar nie; en die rol en funksie van my amp met nougesetheid en na my beste vermoë te verrig.

(In die geval van 'n eed: *So help my God.*)

BYLAE 2**VERKIESINGSPROSEDURE**

(Artikels 15(2) en 31(3))

Aansoek

1. Die prosedure in hierdie Bylae uiteengesit, is van toepassing wanneer ook al die Provinsiale Wetgewer byeenkom om die Premier van KwaZulu-Natal of die Speaker (of Adjunkspeaker) van die Provinsiale Wetgewer te verkies.

Nominasie

2. Die persoon wat voorsit op 'n vergadering waarop hierdie Bylae van toepassing is, moet op die vergadering vir die nominasie van kandidate vra.

Formele vereistes

3. (1) 'n Nominasie moet voorgelê word op die vorm voorgeskryf deur die reëls in item 9 vermeld.
 (2) Die vorm waarop 'n nominasie voorgelê word, moet deur twee lede van die Provinsiale Wetgewer onderteken word, indien die Premier of die Speaker (of Adjunkspeaker) van die Provinsiale Wetgewer verkies word.
 (3) 'n Persoon wat genomineer word, moet aanname van die nominasie te kenne gee deur die nominasievorm of enige ander vorm van skriftelik bevestiging te onderteken.

Aankondiging van name van kandidate

4. Op 'n vergadering waarop hierdie Bylae van toepassing is, moet die voorsittende persoon die name aankondig van die persone wat as kandidate genomineer is, maar mag nie enige debat toelaat nie.

Enkele kandidaat

5. Indien slegs een kandidaat genomineer word, moet die voorsittende persoon verklaar dat daardie kandidaat verkies is.

Verkiesingsprosedure

6. Indien meer as een kandidaat genomineer word —
 (a) moet daar by wyse van geheime stemming op die vergadering gestem word;
 (b) mag elke lid wat op die vergadering teenwoordig is, een stem uitbring; en
 (c) moet die voorsittende persoon die kandidaat wat 'n meerderheid van die stemme kry, verkose verklaar.

Uitskakelingsprosedure

7. (1) Indien geen kandidaat 'n meerderheid van die stemme gekry het nie, moet die kandidaat wat die laagste getal stemme kry, uitgeskakel word en moet 'n verdere stemming oor die oorblywende kandidate ooreenkomstig item 6 plaasvind. Hierdie prosedure moet herhaal word totdat 'n kandidaat 'n meerderheid van die stemme kry.
 (2) Indien by die toepassing van sub-item (1), twee of meer kandidate elk die laagste getal stemme kry, moet 'n aparte stemming oor daardie kandidate gehou word, en so dikwels nodig herhaal word, om te bepaal watter kandidate uitgeskakel moet word.

Verdere vergaderings

8. (1) Indien slegs twee kandidate genomineer word, of indien slegs twee kandidate oorbly nadat 'n uitskakelingsprosedure toegepas is, en daardie twee kandidate dieselfde getal stemme kry, moet 'n verdere vergadering binne sewe dae gehou word op 'n tyd wat deur die voorsittende persoon bepaal word.
 (2) Indien 'n verdere vergadering ingevolge sub-item (1) gehou word, moet die prosedure in hierdie Bylae voorgeskryf op daardie vergadering toegepas word asof dit die eerste vergadering vir die betrokke verkiesing is.

Reëls

9. (1) Die Hoofregter moet reëls maak waardeur voorgeskryf word —
- (a) die prosedure vir vergaderings waarop hierdie Bylae van toepassing is;
 - (b) Die pligte van 'n persoon wat op 'n vergadering voorsit, en van enige persoon wat die voorsittende persoon bystaan;
 - (c) die vorm waarop nominasies voorgelê moet word; en
 - (d) die wyse waarop die stemming moet geskeid.
- (2) Hierdie reëls moet bekend gemaak word op die wyse wat die Hoofregter bepaal.

BYLAE 3**OORGANGSREËLINGS**
(Artikel 50)**Uitleg van bestaande wetgewing**

1. Tensy uit die samehang anders blyk of klaarblyklik onvanpas, word 'n verwysing in enige wetgewing na die Provinsiale Parlement, Premier, Provinsiale Kabinet of Provinsiale Minister wat bestaan het toe hierdie Grondwet in werking getree het, uitgelê as 'n verwysing na die Provinsiale Wetgewer, Premier, Uitvoerende Raad, of lid van die Uitvoerende Raad kragtens hierdie Grondwet.

Provinsiale Wetgewer

2. (1) Enigiemand wat 'n lid of ampsdraer van die Provinsiale Wetgewer is wanneer hierdie Grondwet in werking tree, word 'n lid of ampsdraer van die Provinsiale Wetgewer en beklee die amp van lid of ampsdraer ingevolge hierdie Grondwet.
- (2) Die Provinsiale Wetgewer soos ingevolge sub-item (1) saamgestel, word beskou as verkies te wees kragtens hierdie Grondwet vir 'n termyn wat op 13 April 2009 verstryk.
- (3) Vir die duur van die Provinsiale Wetgewer se termyn wat op 13 April 2009 verstryk, behoudens artikel 12(4) van hierdie Grondwet, bestaan die Provinsiale Wetgewer uit 80 lede.
- (4) Die reëls en orders van die Provinsiale Wetgewer wat van krag is wanneer hierdie Grondwet in werking tree, bly van krag behoudens enige wysiging of herroeping.

Ede en plegtige verklarings

4. 'n Persoon wat ingevolge hierdie Bylae in 'n amp aanbly en wat kragtens die nasionale Grondwet 'n ampseed of plegtige verklaring afgelê het, is nie verplig om die ampseed of plegtige verklaring kragtens hierdie Grondwet te herhaal nie.

Afgevaardigdes na Nasionale Raad van Provinsies

5. Die Provinsiale Wetgewer kan, totdat 'n Parlements-wet ingevolge artikel 65(2) van die nasionale Grondwet verorden word, in sy reëls en orders voorsiening maak vir die toewysing van gesag aan sy afvaardiging na die Nasionale Raad van Provinsies om namens hom in die Raad te beraadslag, op te tree en stemme uit te bring.

Uitvoerende Raad

6. (1) Enigiemand wat die Premier is wanneer hierdie Grondwet in werking tree, bly aan in en beklee die amp van Premier ingevolge hierdie Grondwet.
- (2) Enigiemand wat 'n lid van die Uitvoerende Raad is wanneer hierdie Grondwet in werking tree, bly aan in en beklee die amp van lid van die Uitvoerende Raad ingevolge hierdie Grondwet.

Verordening van wetgewing deur hierdie Grondwet vereis

7. Waar hierdie Grondwet die verordening van wetgewing of reëls en orders van die Provinsiale Wetgewer vereis, moet daardie wetgewing en daardie reëls en orders deur die betrokke owerheid verorden of aangeneem word, na gelang van die geval, binne 'n redelike tyd nadat hierdie Grondwet in werking getree het.

MEMORANDUM OOR DIE OOGMERKE VAN DIE KONSEPGRONDWET VAN KWAZULU-NATAL, 2004**1. Agtergrond**

In sy Openingsrede in die Provinsiale Wetgewer op 25 Mei 2004 het die Agbare Premier verklaar dat 'n Konsepgrondwet vir die provinsie gefinaliseer en aan die Provinsiale Wetgewer voorgelê sal word vir bespreking en aanvaarding om teen die einde van November 2004 gereed te wees vir sertifisering deur die Konstitusionele Hof.

In sy rede het die Premier belowe om wetgewende erkenning vir die rol, status en bevoegdhede van Sy Majesteit die Koning teen die einde van November 2004 daar te stel.

Die Agbare Premier het hom ook daartoe verbind om die Uitvoerende Raad te vergroot ten einde 'n meer verteenwoordigende uitvoerende gesag vir die provinsie te verseker.

Die Konsepgrondwet van KwaZulu-Natal, 2004 poog om uitvoering aan die voorgenoemde ondernemings van die Agbare Premier te gee.

2. Provinsiale bevoegdheid om 'n provinsiale grondwet aan te neem

Artikel 143 van die nasionale Grondwet, 1996 handel oor die inhoud van provinsiale grondwette en lui soos volg:

"143.(1) '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 dié waarvoor in hierdie Hoofstuk voorsiening gemaak word; of
- (b) die instelling, rol, gesag en status van 'n tradisionele monarg waar dit gepas is.
- (2) Bepalings wat ingevolge paragraaf (a) of (b) van subartikel (1) in 'n provinsiale grondwet of grondwetwysiging ingesluit word —
 - (a) moet aan die waardes in artikel 1 en aan Hoofstuk 3 voldoen; en
 - (b) mag nie aan die provinsie enige bevoegdheid of funksie opdra wat —
 - (i) buite die bestek van provinsiale bevoegdheid ingevolge Bylaes 4 en 5 val nie; of
 - (ii) buite die bevoegdheid en funksies val wat deur ander artikels van die Grondwet aan die provinsie oopgedra word nie.”.

Dit is gevolglik duidelik dat die provinsiale grondwet —

- (a) voorsiening mag maak vir die instelling, rol, bevoegdheid en status van 'n tradisionele monarg, solank die betrokke bepalings binne die provinsiale bevoegdheid ingevolge Bylaes 4 en 5 van die nasionale Grondwet, 1996 val, en andersins met die nasionale Grondwet, 1996 bestaanbaar is; en
- (b) voorsiening mag maak vir verskillende uitvoerende gesagstrukture wat 'n vergroting, of 'n verandering in die samestelling, van 'n provinsiale uitvoerende raad insluit.

3. Die bepalings van die Konsepgrondwet van KwaZulu-Natal, 2004 wat oor die Tradisionele Monarg handel

Die Konsepgrondwet van KwaZulu-Natal, 2004, spreek die kwessie van die Tradisionele Monarg vir die provinsie aan in Hoofstuk 4 (klousules 43 – 48).

Klousule 43 maak voorsiening vir die status, erkenning en instelling van die amp van Monarg vir KwaZulu-Natal. Die persoon wat tans die amp van Koning van die Zoeloe-volk, die Koning van *AmaZulu*, die *Ingonyama* of *Isilo* beklee, word as die Monarg van die provinsie KwaZulu-Natal beskou. Dit sal die eerste keer sedert 1987 wees dat Sy Majesteit formeel deur die regering in ons provinsie erken word.

Die Monarg moet, voordat hy die amp aanvaar, 'n eed of plegtige verklaring van trou aan die Republiek van Suid-Afrika en die provinsie KwaZulu-Natal en gehoorsaamheid aan die nasionale Grondwet en hierdie Grondwet aflê.

Klousule 44 handel oor opvolging met betrekking tot die amp van die Monarg en maak voorsiening vir erfopvolging in ooreenstemming met gewoontereg of provinsiale wetgewing.

Klousule 45 maak voorsiening vir die indentifisering of aanwysing van 'n Regent (plaasvervanger) indien die Monarg jonger as 21 jaar is, of indien die Monarg vir 'n beduidende tydperk uit die provinsie afwesig is.

Klousule 46 handel in besonderhede oor die rol, verantwoordelikhede en funksies van die Monarg. Provinsiale wetgewing kan bykomende bevoegdhede aan die Monarg verleen of verdere verantwoordelikhede aan die Monarg opdra. As 'n simbool van eenheid vir al die mense van KwaZulu-Natal, mag die Monarg nie aan partypolitieke aktiwiteite deelneem nie of enige identifisering met, ondersteuning van of teenkanting teen enige politieke party te kenne gee nie.

Onderlinge oorleg met die monarg word in klousule 47 gereël.

Klousule 48 maak voorsiening vir 'n Siviele Lys van die Monarg wat 'n toelaag verteenwoordig wat deur die Provinsiale Regering betaal word om voorsiening te maak vir die onderhoud en uitgawes van die Koninklike Huishouding. Hierdie fondse moet jaarliks ingevolge 'n bewilliging deur 'n Wet van die Provinsiale Wetgewer goedgekeur word en 'n rekenpligte amptenaar in 'n provinsiale departement moet die administrasie van hierdie fondse bestuur.

4. Die bepalings van die Konsepgrondwet van KwaZulu-Natal, 2004 wat oor die samestelling van die Uitvoerende Raad handel

Daar word in klousule 35 van die Konsepgrondwet van KwaZulu-Natal, 2004 oor die samestelling van die Provinsiale Uitvoerende Raad gehandel.

Hierdie klousule beoog 'n vergroting van die Uitvoerende Raad tot 'n maksimum van 12 lede wat deur die Premier aangestel word uit lede van die Provinsiale Wetgewer en een bykomende lid wat bevoeg is om lid van die Provinsiale Wetgewer te wees, maar nie een is nie.

Klousule 35 noodsaak 'n voortvloeiende bepaling vervat in klousule 36(4) om voorsiening te maak dat sou die Premier 'n lid van die Uitvoerende Raad aanstel wat bevoeg is om lid van die Provinsiale Wetgewer te wees, maar nie een is nie, daardie lid kan sitting neem in die Provinsiale Wetgewer, daarin kan praat, en geregtig is op parlementêre privilegie soos in klousule 20 uiteengesit, maar daardie lid mag nie in die Provinsiale Wetgewer stem nie.

Klousule 35 sal uitvoering gee aan die Premier se wens om 'n meer verteenwoordigende uitvoerende gesag vir die provinsie in te stel.

5. Die Aanhef van die Konsepgrondwet van KwaZulu-Natal, 2004

Die Aanhef van die Konsepgrondwet van KwaZulu-Natal, 2004, verdien ook vermelding.

Sekere vrae is geopper met betrekking tot die verwysing in die Aanhef na die uitdrukking “(In nederige erkentlikheid teenoor die *Almagtige God*” en die woord “(B)id”.

Suid-Afrika is 'n sekulêre Staat en die Handves van Regte wat in Hoofstuk 2 van die nasionale Grondwet, 1996 vervat is, waarborg godsdiensvryheid, geloof en mening (artikel 15).

Die Grondwet van die Wes-Kaap, 1997 (soos deur die Konstitusionele Hof gesertifiseer) bevat 'n soortgelyke Aanhef met die uitdrukking: “In nederige erkentlikheid teenoor die *Almagtige God*”.

Die kwessie is spesifiek in die beredenering geopper en die Konstitusionele Hof het in Saak CCT 6/97 (1997 (4) SA 795 CC: Sertifisering van die Grondwet van die Wes-Kaap, 1997) soos volg kommentaar gelewer:

“Die Aanhef

[28] Die Aanhef van die Grondwet van die Wes-Kaap (GvdWK) begin met die sinsnede “in nederige erkentlikheid teenoor die Almagtige God”. In die beredenering is die vraag geopper of dit onbestaanbaar is met [die nasionale Grondwet, 1996] NG 15, wat bepaal dat:

- (1) Elkeen het die reg op vryheid van gewete, godsdiens, denke, oortuiging en mening.
- (2) Godsdiensbeoefening kan by staats- of staatsondersteunde instellings geskied mits —
 - (a) daardie beoefening reëls nakom wat deur tersaaklike openbare gesag gemaak is;
 - (b) dit op 'n billike grondslag geskied; en
 - (c) bywoning daarvan vry en vrywillig is.
- (3) (a) Hierdie artikel belet nie wetgewing wat erkenning verleen aan —
 - (i) huwelike wat aangegaan is kragtens enige tradisie, of 'n stelsel van godsdiens-, persone- of familiereg nie; of
 - (ii) stelsels van persone- en familiereg kragtens enige tradisie, of wat nagevolg word deur persone wat 'n besondere godsdiens aanhang nie.
- (b) Erkenning ingevolge paragraaf (a) moet met hierdie artikel en die ander bepalings van die Grondwet bestaanbaar wees.”.

Die aanroeping van 'n godheid in hierdie inleidende woorde van die aanhef van die [Grondwet van die Wes-Kaap] GvdWK het nie enige besondere grondwetlike betekenis nie en ego die slotrede van die aanhef van die NG. Dit is 'n eeue-oue manier om gewigtigheid te verleen en word in baie kulture en 'n verskeidenheid kontekste gebruik.

Aldus word in die Verenigde State van Amerika met sy uitdruklike Vestigingsklousule wat staat en kerk van mekaar skei, die gebruik van die nasionale leuse (“In God we trust”) en die verwysing na God in die Belofte van Trou aan die vlag beskou as “seremoniële deïsme”. Sulke woorde het geen praktiese grondwetlike uitwerking nie en staan ook nie in beginsel vyandig teenoor die gees en oogmerke van die NG nie. Dit kan ook nie gebruik word om die bepalings van NG 15 beperkend uit te lê nie. Hierdie woorde kan derhalwe geen uitwerking op die regte van gelowiges of nie-gelowiges hê nie. In die omstandighede is daar nie enige onbestaanbaarheid tussen die aanhef van die GvdWK en die NG nie.”.

Daar word aangevoer dat die woord “*Bid*” soos in die Aanhef van die Konsepsgrondwet van KwaZulu-Natal, 2004, gebruik word eweneens nie teenstrydig met die nasionale Grondwet, 1996 is nie.

Trouens, die nasionale Grondwet, 1996 en die volkslied van die Republiek bevat ook die volgende uitdrukkings waarin die godheid se seën afgebid word: “*Nkosi Sikelel' iAfrika. God Bless South Africa. God Seën Suid-Afrika.*”, en so ook die Grondwet van die Wes-Kaap, 1997 en die Konsepsgrondwet van KwaZulu-Natal, 2004.

Die gevolgtrekking is dus dat die gebruik van die uitdrukking “(In nederige erkentlikheid teenoor die Almagtige God)” en die woord “(B)*id*” in die Konsepsgrondwet van KwaZulu-Natal, 2004, nie 'n regsprobleem of 'n grondwetlike probleem skep nie.

6. Die oorblywende bepalings van die Konsepsgrondwet van KwaZulu-Natal, 2004

Die res van die bepalings wat in die Konsepsgrondwet van KwaZulu-Natal, 2004, vervat is, weerspieël die ooreenstemmende bepalings wat in die nasionale Grondwet, 1996 vervat is. Die bepalings is welbekend en grootliks selfverduidelikend vir enigeen wat met die nasionale Grondwet, 1996 vertrou is.

7. Die status van die Konsepsgrondwet van KwaZulu-Natal, 2004

Die Konsepsgrondwet van KwaZulu-Natal, 2004, verteenwoordig 'n voorstel van die Agbare Premier wat aan die Provinsiale Wetgewer voorgelê moet word vir oorweging en wyer oorlegpleging en openbare deelname soos in die Staande Reëls en Orders van die Provinsiale Wetgewer in die vooruitsig gestel word.

Op daardie stadium word die Konsepsgrondwet van KwaZulu-Natal, 2004, die verantwoordelikheid van die Provinsiale Wetgewer en sal dié se prosesse in werking tree: publikasie vir kommentaar (een maand); openbare deelname (openbare verhore), bespreking en aanvaarding, waarna die Speaker van die Provinsiale Wetgewer die Provinsiale Grondwet wat aldus aangeneem is ingevolge artikel 144(1) van die nasionale Grondwet, 1996 na die Konstitusionele Hof vir sertifisering moet verwys.

Daar moet kennis geneem word dat 'n Provinsiale Grondwet 'n meerderheid van minstens tweederdes in die Provinsiale Wetgewer vereis (artikel 142 van die nasionale Grondwet, 1996).

Die Provinsiale Grondwet kry die krag van 'n Wet nadat dit deur die Konstitusionele Hof gesertifiseer en deur die Premier onderteken is, en dit tree in werking by publikasie in die nasionale *Staatskoerant* (artikel 45(1) and (2) van die nasionale Grondwet, 1996).

UMTHETHOSISEKELO WAKWAZULU-NATALI, 2004

UHLAKA loMthethosisekelo waKwaZulu-Natali njengoba ubekiwe ngezansi selwazisiwe kwisiShayamthetho saKwaZulu-Natali. Umphakathi kanye namanye amaqembu anentshisekela ayamenywa ukuthi ethule izethulo zawo ngalo Mthethosisekelo kuleli kheli elilandelayo:

Ziqondiswe ku —
Mnumzane B. D. Sibisi
Head: House Proceedings
KwaZulu-Natal Legislature
Private Bag X 9112
PIETERMARITZBURG
3200

ngaphambi kosuku loku-1 kuZibandlela 2004.

Uhlaka lwalo Mthethosisekelo lungatholakala e-Hhovisi No. 23 Greens Chambers, 239 Longmarket Street, Pietermaritzburg.

Mnu. S. E. Shange
iBamba likaNobhala wesiShayamthetho saKwaZulu-Natali

UMTHETHOSISEKELO OSELUHLAKA WAKWAZULU-NATALI, 2004

OKUQUKETHWE

Isandulelo

- ISahluko 1 Ukukhokhelwa kwezinhlinzeko
- ISahluko 2 IsiShayamthetho sesiFundazwe
- ISahluko 3 UMkhandlu oPhethe isiFundazwe
- ISahluko 4 Ubuholi beNdabuko
- ISahluko 5 Ukuphathwa kwesiFundazwe
- ISahluko 6 Izinhlinzeko ezijwayelekile
- UHlelo 1 Izifungo neziqinisekiso
- UHlelo 2 Ukuvota
- UHlelo 3 Izinhlelo zoguquko

ISANDULELO

Ngokuzithoba kuNkulunkulu uMnini Mandla oNke, thina bantu baKwaZulu-Natali —

Siqhutshwa wugqozi lokwehlukana nokulwa nodlame siphokophele ekubeni yisizwe esikhululekile, esinoxolo, esiphephile nesiphumelelayo senzela isizukulwane sethu nempumelelo;

SIQONDA ngokwehlukahlukana kwamasiko namagugu ethu okukhethekile;

SIQONDA futhi siphokophelele ekulungiseni izimo zakudala ezazingalungile;

SIQONDA isidingo soxolo, nokubuyisana kanye nobulungiswa;

SIQONDA ukuthi inkululeko kumele ihambisane nezibopho sokuthuthukisa umphakathi kanye nemisebenzi kwizakhamizi nasemiphakathini yethu;

SIZIMISELE ukuthuthukisa intuthuko edidiyele nesimeme KwaZulu-Natali nokuphucula isimo sempilo sabo bonke abantu ngohulumeni onobulungiswa nosebenza kanzima; futhi

SIQINISEKISE ukuthi iKwaZulu-Natali, isiFundazwe seRiphabhuliki yaseNingizimu Afrika, sakhelwe —

entandweni yeningi;

ekuhlonipheni amalungelo abantu;

ekuhlonipheni isidingo sokuvuselela ubuntu;

ekuhlonipheni imindeni;

ekuhlonipheni inkululeko yezenkolo;

emigomweni yokwethembana nokusebenzisana;

kuhulumeni obambisene, ozibophezele nohola ngendlela efanele;

emthethweni; kanye

nasekuhlonipheni uMthethosisekelo kazwelonke njengomthetho ongaphezu kwayo yonke kwiRiphabhuliki yaseNingizimu Afrika;

NGALOKHU NGAMALUNGU ETHU AKHETHIWE samukela lo Mthethosisekelo waKwaZulu-Natali.

SIKHULEKELA —

ukuthi uNkulunkulu anikeze abaholi ukuhlakanipha, ulwazi kanye nokuqonda ukuhola nokusebenzela abantu bethu; nokuthi uNkulunkulu ahlenge izwe, avikele nabantu bethu.

Nkosi Sikelel' i-Afrika. God Bless South Africa. God Seën Suid-Afrika.

UKUHLELWA KWEZIGABA

1. IsiFundazwe saKwaZulu-Natali
2. Imingcele yaKwaZulu-Natali
3. Ukwamukelwa, kanye nokuhunyushwa kwalo Mthethosisekelo
4. Ukusetshenziswa kwalo Mthethosisekelo
5. Izimpawu zesiFundazwe nokungamagugu esifundazwe
6. Igunya lokushaya umthetho
7. Imithethosivivinyo yokuchibiyela nokuchitha uMthethosisekelo
8. Ukubunjwa kwesiShayamthetho sesiFundazwe
9. Ukuqokwa kwesiShayamthetho sesiFundazwe
10. Ubulungu besiShayamthetho sesiFundazwe
11. Ukufunga kwamalungu esiShayamthetho sesiFundazwe
12. Isikhathi sokusebenza kwesiShayamthetho sesiFundazwe
13. Ukuhlakazwa kwesiShayamthetho sesiFundazwe ngaphambi kokuphela kwesikhathi saso sokusebenza
14. Izikhathi zokuhlala nezikuthatha ikhefu kwesiShayamthetho sesiFundazwe
15. USomlomo wesesiShayamthetho sesiFundazwe
16. Ikhoramuzi nezinqumo zesiShayamthetho sesiFundazwe
17. Amandla esiShayamthetho sesiFundazwe
18. Umholi wamaqembu aphikisayo kwesiShayamthetho sesiFundazwe
19. Ubufakazi noma imininingwane ethulwa kwesiShayamthetho sesiFundazwe
20. Amalungelo amalungu esiShayamthetho sesiFundazwe kanye namanxusa aKwaZulu-Natali asebenza ngokugcwele eMkhandlwini weziFundazwe kaZwelonke
21. Ukufinyelela komphakathi ezinqubeni zesiFundazwe saKwaZulu-Natali
22. Ukwethulwa kweMithethosivivinyo kwesiShayamthetho sesiFundazwe
23. IMithethosivivinyo yeziMali
24. Ukuvunywa kweMithethosivivinyo nguNdunankulu
25. Ukushicilelwa nokuqaliswa kweMithetho yesiFundazwe
26. Ukugcinwa endaweni ephephile kweMithetho yesiFundazwe
27. UMkhandlu oPhethe
28. Izihlalo zoMkhandlu oPhethe wesifundazwe
29. Ukunikezwa kweMkhandlu kaMasipala imisebenzi
30. Amandla nemisebenzi kaNdunankulu
31. Ukuqokwa kukaNdunankulu
32. Ukuqala kokusebenza kukaNdunankulu
33. Isikhathi sokusebenza nokususwa esikhundleni kukaNdunankulu
34. IBamba likaNdunankulu
35. Ukubunjwa nokuqokwa koMkhandlu oPhethe
36. Isibopho sokuphendula samalungu oMkhandlu oPhethe
37. Ukuqhubeka koMkhandlu oPhethe emva kokhetho
38. Ukufungiswa kwamalungu oMkhandlu oPhethe
39. Ukuziphatha kwamalungu oMkhandlu oPhethe
40. Ukudluliselwa kwemisebenzi yamalungu oMkhandlu oPhethe
41. Ukwabiwa kwesikhashana kwemisebenzi yamalungu oMkhandlu oPhethe
42. Isiphakamiso sokungethembeki kwamalungu oMkhandlu noma kukaNdunankulu

43. Isikhundla, ukuhlonishwa kanye nesikhungo sobuKhosi
 44. Ukuthatha izintambo zobuKhosi
 45. Ukukhethwa nokuqokwa kweBamba leNkosi
 46. Iqhaza, izibopho kanye nemisebenzi yeNkosi
 47. Ukuxoxisana neNgonyama
 48. Isabelo seziMali seNgonyama
 49. IkoMkhulu lokuphathwa kwesifundazwe
 50. Izinhlelo zoguquko
 51. Isihloko esifishane kanye nokuqaliswa
- UHlelo 1
UHlelo 2
UHlelo 3

ISIAHLUKO 1

IZINHLELINZEKO ZOKUSUNGULA

IsiFundazwe saKwaZulu-Natali

1. IKwaZulu-Natali yisiFundazwe seRiphabhuliki yaseNingizimu Afrika njengoba sisungulwe nguMthethosisekelo weRiphabhuliki yaseNingizimu Afrika, 1996 (emva kwalokhu ozobizwa ngoMthethosisekelo kaZwelonke).

Imingcele yaKwaZulu-Natali

2. Imingcele yaKwaZulu-Natali inqunywe nguMthethosisekelo kaZwelonke.

Ukwamukelwa, nesikhundla kanye nokuhunyushwa kwalo Mthethosisekelo

3. (1) Lo Mthethosisekelo uzosetshenziswa KwaZulu-Natali ngokoMthethosisekelo kaZwelonke, umthetho ongaphezu kwayo yonke imithetho yeRiphabhuliki yaseNingizimu Afrika.
- (2) Amandla okushaya imithetho nawokuphatha kanye nemisebenzi yeKwaZulu-Natali eqoshwe kulo Mthethosisekelo asuselwa kuMthethosisekelo kaZwelonke.
- (3) Izinhlelinzeko zoMthethosisekelo akumele zihunyushwe njengezinika noma yiliphi igunya lokushaya umthetho noma elokuphatha KwaZulu-Natali ngokuphikisana noMthethosisekelo kaZwelonke.
- (4) Uma kukhona ukungahambisani phakathi kwemibhalo ngezilimi ezehlukene yalo Mthethosisekelo, umbhalo wesiNgisi yiwona oyolandelwa.

Ukusetshenziswa kwalo Mthethosisekelo

4. (1) Lo Mthethosisekelo usebenza KwaZulu-Natali.
- (2) Kweyame kuMthethosisekelo kaZwelonke, lo Mthethosisekelo yiwona mthetho omkhulu KwaZulu-Natali, futhi izibopho ezibekwe yiwo kumele zenziwe ngenkuthalo nangaphandle kokuchitha isikhathi.

Uphawu laKwaZulu-Natali, izimpawu namagugu esifundazwe

5. Umthetho wesiFundazwe ungahlinzekela —
 - (a) uphawu lwesiFundazwe saKwaZulu-Natali;
 - (b) izimpawu zesifundazwe ngaphandle kophawu olubalulwe ngenhla;
 - (c) ukuqhakambisa okungamagugu esifundazwe.

ISIAHLUKO 2

IPHALAMENDE LESIFUNDAZWE

IsiShayamthetho

6. (1) IsiShayamthetho saKwaZulu-Natali sisePhalamende lesiFundazwe.
- (2) IPhalamende lesiFundazwe libophezelwe nguMthethosisekelo kaZwelonke, futhi kumele lihambisane, futhi lisebenze, ngokwale Mithethosisekelo.
- (3) IPhalamende lesiFundazwe —
 - (a) lingachibiyela noma lichithe lo Mthethosisekelo;
 - (b) lingamukela umthetho waKwaZulu-Natali ngokoMthethosisekelo kaZwelonke nangokuhambisana nalo Mthethosisekelo;
 - (c) lingaphasisa umthetho waKwaZulu-Natali maqondana nanoma yiluphi udaba olunikezwe iKwaZulu-Natali ngayinoma yimuphi umthetho kaZwelonke; futhi
 - (d) linganikeza uMkhandlu kaMasipala noma yimaphi amandla alo okukhulunywe ngawo endimeni (b) futhi, lapho livumelekile ukwenze njalo, noma yimaphi amandla alo okushaya umthetho okukhulunywe ngawo endimeni (c).
- (4) IPhalamende lesiFundazwe —

- (a) ngesixazululo esiphakanyiswe eMbuthweni kaZwelonke sokuthi liphasiswe umthetho ophathelene nanoma yiluphi udaba ongaphandle kwegunya lesiShayamthetho sesiFundazwe, noma oluphathelele nokuthi uMthetho wePhalamende unamandla kunomthetho wesifundazwe;
- (b) ngesixazululo esiphakanyiswe eMkhandlwini weziFundazwe kaZwelonke sokuthi liphasiswe umthetho ophathelene nanoma yiluphi olunye udaba;
- (c) nangesixazululo esisekelwe ngamavoti okungenani amalungu alo amabili kwamathathu sokucela iPhalamende ukuthi lishintshe igama lesiFundazwe.

IMithethosivivinyo echibiyela noma echitha uMthethosisekelo

7. UMthethosivivinyo wokuchibiyela noma wokuchitha lo Mthethosisekelo —

- (a) kumele uphasiswe yisiShayamthetho sesiFundazwe ngamavoti okungenani amalungu aso amabili kwamathathu; futhi
- (b) ungafaka izinhlinzeko zomthethosisekelo kuphela.

Ukubunjwa kwesiShayamthetho sesiFundazwe

8. (1) IsiShayamthetho sesiFundazwe siqukethe amalungu aqokiwe angengaphezu kwamashumi ayisishigalombili (80).

- (2) Isibalo samalungu kumele sinqunywe ngokwendlela enqunywe ngumthetho kazwelonke.

Ukhethe lwesiShayamthetho sesiFundazwe

9. IsiShayamthetho sesiFundazwe siqukethe abantu abaqokwe ngokohlelo lokhethe —

- (a) olunqunywe ngumthetho kazwelonke;
- (b) oluhambisana nesigaba sesiFundazwe sohlu lwabavoti olwejwayelekile;
- (c) oluhlinzekela ubudala beminyaka eyishumi nesishiyagalombili (18); kanye
- (d) nemiphumela, ngokuvamile, ehambisana nabavoti.

Ubulungu kwisiShayamthetho sesiFundazwe

10. (1) Noma yisiphi isakhamuzi esivumelekile ukuvotela uMkhandlu kaZwelonke singaba yilungu ePhalamende lesiFundazwe, ngaphandle —

- (a) komuntu oqokwe, noma osebenzela, uhulumeni futhi oholela lokho kuqokwa noma lokho kuqashwa, ngaphandle —
 - (i) kukaNdunankulu kanye namanye amalungu oMkhandlu oPhethe waKwaZulu-Natali; kanye
 - (ii) nabaphathi-zikhundla abamisebenzi yabo ihambisana nemisebenzi neyelungu lesiShayamthetho sesiFundazwe, futhi abathathwa njengabayifanele layo misebenzi ngokomthetho kazwelonke;
- (b) amalungu oMkhandlu kaZwelonke, amaxusa aqashwe ngokugcwele eMkhandlwini weziFundazwe kaZwelonke amalungu oMkhandlu kaMasipala;
- (c) engene shi ezikweletini ngokungenakuhlengeka;
- (d) noma yimuphi umuntu omenyezwe njengongaphilile kahle engqondweni yinkantolo yeRiphabhuliki yaseNingizimu Afrika;
- (e) noma yimuphi umuntu, emva komhlaka 3 kuNhlobo 1997, owayeboshiwe noma oboshelwe ukwephula umthetho futhi waboshwa isikhathi esingaphezu kwezinyanga eziyishumi nane ngaphandle kokunikwa ithuba lokukhetha phakathi kokuboshwa nokukhokhiswa inhlawulo, noma ngabe kukwiRiphabhuliki noma ngaphandle uma icala lokho kwephula umthetho bekungaba yicala kwiRiphabhuliki, kodwa akukho muntu ongathathwa njengoseke waboshwa engakatholi ithuba lokuphikisa isigwebo esinqunywe, noma kuze kube leso sikhathi sokuphikisa isigwebo sesiphelile. Ukukhishwa ngaphansi kwalesi sigaba kuphela emva kweminyaka emihlanu emva kokuphela kwesigwebo.
- (2) Umuntu ongafanele ukuba yilungu lesiShayamthetho sesiFundazwe ngokwesigatshana (1)(a) noma (b) angangenela ukhethe kwisiShayamthetho sesiFundazwe, kweyame kunoma yiziphi izithibelo noma imibandela enqunywe ngumthetho kazwelonke.
- (3) Umuntu ulahlekelwa ngubulungu kwisiShayamthetho sesiFundazwe uma lowo muntu —
 - (a) engasafanelekile;
 - (b) esula njengelungu; noma
 - (c) ephuthile kwisiShayamthetho ngaphandle kwemvume lapho isimo semithetho nemiyalelo kwisiShayamthetho sesiFundazwe inquma ukulahleka kobulungu.
- (4) Izikhala kwisiShayamthetho sesiFundazwe kumele zigcwaliswe ngokomthetho kazwelonke.

Ukufunga kwamalungu esiShayamthetho sesiFundazwe

11. Amalungu esiShayamthetho sesiFundazwe kumele afunge noma aqinisekise ukwethembeka kwawo kwiRiphabhuliki naKwaZulu-Natali kanye nokuthobela uMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo, ngokuhambisana nohlamvu 1 loHlelo 1, ngaphambi kokuthi aqale ukwenza imisebenzi yawo njengamalungu.

Isikhathi sokusebenza kwesiShayamthetho sesiFundazwe

12. (1) IsiShayamthetho sesiFundazwe siqokelwa isikhathi esiyiminyaka emihlanu.

- (2) (a) Uma isiShayamthetho sihlakaziwe ngokwesigaba 13 noma uma isikhathi salo sokubenza sesiphelile, uNdunankulu kumele, ngesimemezelo, abize futhi anqume usuku lokhethe, okumele ubanjwe ezinsukwini ezingashumi ayisishiyagalolunye emva kokuhlakazwa kwesiShayamthetho sesiFundazwe noma emva kokuphelelwa kwaso yisikhathi sokusebenza.

- (c) Isimemezelo sokunquma izinsuku zokhetho singakhishwa ngaphambi noma ngemuva kokuphela kwesikhathi sokusebenza kwesiShayamthetho sesiFundazwe.
- (3) Uma umphumela wokhetho lwesiShayamthetho sesiFundazwe ungamenyezelwanga esikhathini okukhulunywe ngaso esigabeni 190 soMthethosisekelo kaZwelonke, noma uma ukhetho lubekwe eceleni yinkantolo, olunye ukhetho kumele lubanjwe ngokwesigaba 108(3) soMthethosisekelo kaZwelonke.
- (4) IsiShayamthetho sesiFundazwe sinamadla okusebenza kusukela ngesikhathi sihlakazwa noma siphelelwa yisikhathi, kuze kube wusuku olungaphambi kosuku lokuqala lokuqala isiShayamthetho sesiFundazwe esilandelayo.

Ukuhlakazwa kwesiShayamthetho sesiFundazwe

13. (1) UNdunankulu kumele ahlakaze isiShayamthetho sesiFundazwe uma —

- (a) isiShayamthetho sesiFundazwe sesamukele isinqumo sokuhlakazeka ngevoti leningi lamalungu alo; futhi
- (b) sekwedlule iminyaka emithathu isiShayamthetho sesiFundazwe saqokwa.
- (2) UNdunankulu obambile kumele ahlakaze isiShayamthetho sesiFundazwe uma kukhona isikhala esikhundleni sikaNdunankulu futhi nesiShayamthetho sesiFundazwe sehluleka ukuqoka uNdunankulu omusha ezinsukwini ezingamashumi amathathu ngemuva kokubela kwaleso sikhala.

Izikhathi zokuhlangana nezamakhetho

- 14. (1) Emva kokhetho, umhlangano wokuqala wesiShayamthetho sesiFundazwe ngesikhathi nangosuku olunqunywe yiJaji elibekwe yiJaji eliKhulu, kodwa kungabi emva kwezinsuku eziyishumi nane (14) emva kokumenyezelwa komphumela wokhetho.
- (2) IsiShayamthetho sesiFundazwe kumele sinqume izikhathi kanye nobude beminye imihlangano kanye namakhetho awo.
- (3) UNdunankulu angabizela ngokushesha isiShayamthetho sesiFundazwe emhlanganweni ophuthumayo nganoma yisiphi isikhathi ukuzokwenza umsebenzi ophuthumayo.
- (4) IsiShayamthetho sesiFundazwe singanquma, izindawo lapho amakomidi aso, ayohlala khona ngokwejoywayekile.

USomlomo wesiShayamthetho sesiFundazwe

- 15. (1) IsiShayamthetho sesiFundazwe kumele siqoke uSomlomo phakathi kwamalungu aso emhlanganweni wokuqala emva kokuqokwa kwaso, noma uma kunesidingo sokugwalisa lesi sikhala.
- (2) (a) Ijaji eloqokwe yiJaji eliKhulu kumele lengamele ukuqokwa kukaSomlomo.
- (b) Inqubo ebekwe oHlelweni 2 lwalo Mthethosisekelo isebenza ekuqokweni kukaSomlomo.
- (3) IsiShayamthetho sesiFundazwe —
 - (a) singaqoka iSekela likaSomlomo phakathi kwamalungu aso;
 - (b) singaqoka amanye amalungu angengamela imihlangano kumalungu aso ukuze asize uSomlomo kanye neSekela likaSomlomo.
- (4) (a) IsiShayamthetho sesiFundazwe singasusa uSomlomo, iSekela likaSomlomo kanye nanoma yiliphi elinye ilungu elengamela imihlangano ngesixazululo.
- (b) Iningi lamalungu esiShayamthetho sesiFundazwe kumele libe khona ngesikhathi kuthathwa lesi sinqumo.

Ikhoramukanye nezinqumo zesiShayamthetho sesiFundazwe

- 16. (1) Ngaphandle uma lo Mthethosisekelo usho okwehlukile —
 - (a) iningi lamalungu esiShayamthetho sesiFundazwe kumele abe khona ngaphambi kokuthi kuvotelwe uMthethosivivinyo noma ukuchithiyelwa koMthethosivivinyo;
 - (b) okungenani ilungu elilodwa kwamathathu kumele libe khona ngaphambi kokuthi kuvotelwe noma yiluphi olunye udaba olubekwe ngaphambi kwesiShayamthetho sesiFundazwe; futhi
 - (c) zonke izindaba ezibekwe phambi kwesiShayamthetho sesiFundazwe zinqunywa ngokwesekwa yiningi lamavoti afakiwe.
- (2) Ilungu elengamele umhlangano wesiShayamthetho sesiFundazwe alikwazi ukufaka ivoti elejwayekile, kodwa —
 - (a) kumele lifake ivoti elingumqamula juqu uma inani lamavoti odaba oludingidwayo lilingana zinhlangothi zombili; futhi
 - (b) lingafaka ivoti elejwayekile uma udaba okumele lunqunywe ngokwesekwa okungenani ngamalungu esiShayamthetho sesiFundazwe amabili kwamathathu.

Amandla esiShayamthetho sesiFundazwe

- 17. (1) Ekusebenziseni amandla aso okushaya imithetho, isiShayamthetho sesiFundazwe —
 - (a) singabheka, siphasisa, sichibiyela noma sichithe noma yimuphi uMthethosivivinyo owethulwe kuso;
 - (b) ungasungula noma ulungise umthetho, ngaphandle kweMithethosivivinyo yezimali.
- (2) Kweyame kwizinhlinzeko zesigaba (4), isiShayamthetho sesiFundazwe kumele sihlizenzekele izindlela —
 - (a) zokuqinisekisa ukuthi zonke izingxenye zombuso zinesibopho sokuphendula kuwo; kanye
 - (b) nezokubeka iso —
 - (i) ekusetshenzisweni kwegunya lokuphatha, kubandakanya nokuqaliswa komthetho;
 - (ii) nakunoma iyiphi ingxenye yombuso.

(3) Isishayamthetho sesiFundazwe —

- (a) singanquma futhi silawule izinhlelo zaso zangaphakathi kanye nezinqubo; futhi
- (b) singabeka imithetho nemiyalelo okuphathelele nokusebenza kwaso, kodwa sibhekelele intando yeningi, isibopho sokubika, ukusebenza ngendlela esobala kanye nokubamba iqhaza komphakathi.

(4) Isishayamthetho sesiFundazwe kumele emithethweni nasemiyalelweni yaso sihlizwekele —

- (a) ukusungulwa, ukubunjwa, amandla, imisebenzi, izinqubo kanye nesikhathi sokusebenza kwamakomidi aso;
- (b) ukubamba iqhaza ezinqubeni zeshayamthetho sesiFundazwe kwamakomidi aso amaqembu amancane amelwe kwishayamthetho sesiFundazwe ngendlela ehambisana nentando yeningi;
- (c) ukunikezwa kwamakomidi aso amandla njengoba engadingeka ukufeza umsebenzi wawo;
- (d) ukusebenzisana phakathi kweshayamthetho sesiFundazwe kanye namakomidi aso, kanye noMkhandlu kaZwelonke weziFundazwe;
- (e) ukwamukelwa kwezicelo, kwemibono noma kweziphakamiso ezivela kunoma yimuphi umuntu noma isikhungo esithintekayo; kanye
- (f) nosizo lwezimali kanye nolokuphatha kunoma yiliphi iqembu elikwishayamthetho sesiFundazwe, ngokulingana namalungu alimele, ukuze iqembu likwazi ukwenza imisebenzi yalo kwishayamthetho ngendlela efanele.

Umholi wamaQembu aPhikisayo kwishayamthetho sesiFundazwe

18. Imithetho nemiyalelo yesishayamthetho sesiFundazwe kumele ihlizwekele ukuhlonishwa koMholi wamaQembu aPhikisayo kwishayamthetho sesiFundazwe.

Ubufakazi noma ulwazi oluphambi kweshayamthetho sesiFundazwe

19. Isishayamthetho sesiFundazwe noma amakomidi aso —

- (a) singabiza noma yimuphi umuntu ukuthi azokwethula ubufakazi obufungelwe noma obuqinisekisiwe phambi kwalo, noma ethule umbhalo;
- (b) singadinga ukuthi noma yimuphi umuntu noma ingxenye yombuso ukuthi yethule umbiko kusona;
- (c) singaphoqa, ngokomthetho noma ngokwemithetho noma ngokwemiyalelo yesishayamthetho sesiFundazwe, noma yimuphi umuntu noma ingxenye yombuso ukuthi ihambisane nesamanisi noma nokushiwo ngokwesigaba (a) noma (b); futhi
- (d) singamukela izicelo, imibono noma iziphakamiso kunoma yimuphi umuntu noma isikhungo esithintekayo.

Amalungelo amalugu esishayamthetho sesiFundazwe kanye namalungu aqokwe ngokugcwele eMkhandlwini kaZwelonke weziFundazwe

20. Amalungu esishayamthetho sesiFundazwe kanye namanxusa aKwaZulu-Natali aqashwe ngokugcwele eMkhandlwini kaZwelonke weziFundazwe —

- (a) banelungelo lokukhuluma bakhululeke kwishayamthetho sesiFundazwe nasemakomidini aso, ngendlela ehambisana nemithetho nemiyalelo yaso; futhi
- (b) angeke baquliswe amacala ombango noma obelelesi, baboshwe, bavalelwe noma bakhokhiswe amademeshe ngenxa —
 - (i) yanoma yini bayisho, bayiveze noma abayilethe kwishayamthetho sesiFundazwe, noma kunoma yiliphi ikomidi laso; noma
 - (ii) yanoma yini evezwe ngenxa yabakuyishilo, yabakuvezile noma yabakulethe kwishayamthetho sesiFundazwe noma ekomidini laso.

Ukuvunyelwa komphakathi ezinqubeni zeshayamthetho sesiFundazwe

21. (1) Izinqubo zeshayamthetho sesiFundazwe kanye nezamakomidi aso ziyiqhubeka endaweni evulelekile emphakathi, kodwa kungathathwa izinyathelo —

- (a) zokulawula ukuvumeleka komphakathi, kubandakanya nokuvumeleka kwabemithombo yezindaba, kwishayamthetho sesiFundazwe nasemakomidini aso;
- (b) zokuhlizekela ukusekwa kwanoma yimuphi umuntu futhi, uma kufanele, nokuvinjwa noma ukukhishwa kwanoma yimuphi umuntu.
- (2) Umphakathi, kubandakanya nabemithombo yezindaba, angeke bavinjelwe emhlanganweni wekomidi lesishayamthetho sesiFundazwe ngaphandle uma kufanele ukwenze njalo esidlangalaleni nasemphakathini obuswa ngentando yeningi.
- (3) Isishayamthetho sesiFundazwe kumele sikhuthaze umphakathi ekubambeni iqhaza emisebenzini yaso nakuleyo yamakomidi aso.

Ukwethulwa kweMithethosivivinyo kwishayamthetho sesiFundazwe

22. (1) Yilungu loMkhandlu oPhethe, lekomidi noma lesishayamthetho sesiFundazwe kuphela, elingethula uMthethosivivinyo kwishayamthetho sesiFundazwe.

- (2) Uma uMthethosivivinyo kunguMthethosivivinyo wezeziMali, yilungu loMkhandlu oPhethe elibhekele ezezimali kuphela elingawethula kwishayamthetho sesiFundazwe.

IMithethosivivinyo yezeziMali

23. (1) UMthethosivivinyo unguMthethosivivinyo wezeziMali uma —

- (a) waba izimali;
 - (b) uhlawulisa izintela, amalevi noma ezinye izinhlawulo zesifundazwe;
 - (c) uqeda noma wehlisa, noma ukhulula, kunoma yiziphi ezinteleni, kumalevi noma kwezinye izinhlawulo; noma
 - (d) ugunyaza izimali ezibanjwa ngqo esiKhwameni seziMali sesiFundazwe.
- (2) UMthethosivivinyo wezeziMali angeke ubhekane nolunye udaba ngaphandle —
- (a) kodaba oluphathelele nokwabiwa kwezimali;
 - (b) ukuhlawuliswa, ukuqedwa noma ukwehliswa kwezintela, kwamalevi noma ezinye izinhlawulo zesifundazwe;
 - (c) ukhululwa, ezinteleni, kumalevi noma kwezinye izinhlawulo zesifundazwe; noma
 - (d) ukugunyazwa kwezimali ezibanjwa ngqo esiKhwameni seziMali sesiFundazwe.
- (3) Umthetho wesiFundazwe kumele uhlinzekele inqubo isiShayamthetho sesiFundazwe okumele sichibiyele ngayo uMthethosivivinyo wezeziMali.

Ukuphasiswa kweMithethosivivinyo

24. (1) UNdunankulu waKwaZulu-Natali kumele ezinsukwini ezingamashumi amane nanhlanu emva kokuthi uMthethosivivinyo uphasiswe yisiShayamthetho sesiFundazwe —
- (a) avume futhi asayine uMthethosivivinyo; noma
 - (b) uma uNdunankulu engagculisekile ngokuthi uyahambisana noMthethosisekelo, angawubuyisela kwisiShayamthetho ukuze ucuthungulwe kabusha.
- (2) Uma, emva kokucuthungulwa kabusha, uMthethosivivinyo uqinisekisa ukungagculiseki kukaNdunankulu, uNdunankulu kumele, ezinsukwini ezingamashumi amane nanhlanu emva kwalokho kucuthungulwa, avume futhi asayine uMthethosivivinyo; uma kungenjalo, uNdunankulu kumele, ezinsukwini ezingamashumi amane nanhlanu emva kwalokho kucuthungulwa —
- (a) aphasise futhi asayine uMthethosivivinyo; noma
 - (b) awedlulisele eNkantolo yoMthethosisekelo ezonquma ukuthi uyahambisana noMthethosisekelo noma cha.
- (3) Uma iNkantolo yoMthethosisekelo inquma ukuthi uMthethosivivinyo uyahambisana noMthethosisekelo, uNdunankulu kumele awuphase futhi awusayine ezinsukwini eziyishumi nane.

Ukushicilelwa nokuqaliswa kweMithetho yesiFundazwe

25. (1) UMthethosivivinyo ophasiswe nosayinwe nguNdunankulu uba nguMthetho waKwaZulu-Natali.
- (2) Kumele ushicilelwe ngokushesha *kwiGazethi* yesiFundazwe futhi uqale ukusebenza uma sewushicilelwe noma ngosuku olunqunywe ngokoMthetho.
- (3) Umthetho wesiFundazwe ungahlinzekela ukusatshalaliswa nokushicilelwa kabanzi kwemininingwane yeMithetho yesifundazwe.

Ukugcinwa endaweni ephephile kweMithetho yesifundazwe

26. (1) Ikhophi esayiniwe yoMthetho ingubufakazi obugwele kwezinhlinzeko zawo.
- (2) Emva kokushicilelwa, uMthetho kumele unikezwe iNkantolo yoMthethosisekelo ukuze iwugcine endaweni ephephile.

ISIAHLUKO 3

UMKHANDLU OPHETHE ISIFUNDAZWE

Igunya lokuphatha

27. (1) Igunya lokuphatha iKwaZulu-Natali linikwe uNdunankulu.
- (2) UNdunankulu usebenzisa amandla okuphatha ebambisene namanye amalungu oMkhandlu oPhethe —
- (a) ngokuqalisa umthetho wesifundazwe;
 - (b) ngokuqalisa, ngendlela yokuthi iKwaZulu-Natali inamandla okuphatha ngendlela, yonke imithetho kazwelonke ezindaweni ezibalulwe oHlelweni 4 noma 5 loMthethosisekelo kaZwelonke noma loMthetho wePhalamende uhlinzeka okwehlukile;
 - (c) ngokuqalisa umthetho kazwelonke engaphandle kohlu loHlelo 4 no 5 loMthethosisekelo kaZwelonke, ukuphathwa kwayo okwabelwe uMkhandlu oPhethe ngokoMthetho wePhalamende;
 - (d) ngokusungula nokuqalisa inqubo-mgomo yesifundazwe;
 - (e) ngokudidiyela imisebenzi yokuphathwa kwemisebenzi kanye neyeminyango yakho;
 - (f) ukulungisa nokusungula imithetho yesifundazwe;
 - (g) ngokwenza noma yimiphi eminye imisebenzi eyabelwe uMkhandlu oPhethe ngokoMthethosisekelo kaZwelonke noma ngokoMthetho wePhalamende.
- (3) UMkhandlu wesiFundazwe kumele usebenze ngokuhambisana noMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo.

Ukuhlalanga koMkhandlu wesiFundazwe

28. UMkhandlu wesiFundazwe unganquma indawo lapho wona, kanye nanoma yiliphi ikomidi, ngokuvamile noma ngesikhathi esithile, uyohlangana kuyona.

Ukwabiwa kwemisebenzi eMikhandlwini kaMasipala

29. (1) Ilungu koMkhandlu oPhethe lingabela uMkhandlu kaMasipala noma yimaphi amandla noma umsebenzi okumele wenziwe ngokoMthetho wePhalamende, noma ngokoMthetho kaZwelonke.
- (2) Ukwabiwa komsebenzi —
- (a) kumele kuhambisane nesivumelwano phakathi kwelungu loMkhandlu oPhethe elifanele kanye noMkhandlu kaMasipala;
 - (b) kumele kuhambisane noMthetho ophathelene nokusetshenziswa kwalawo mandla noma nokwenziwa kwalowo msebenzi;
 - (c) kuyiqala ukusebenza emva kokumenyenzelwa nguNdunankulu kwiGazethi yesiFundazwe.

Amandla kanye nemisebenzi kaNdunankulu

30. UNdunankulu unamandla nemisebenzi okubekwe kuleso sikhundla nguMthethosisekelo kazwelonke, yilo Mthethosisekelo kanye nanoma yimuphi omunye umsebenzi.

Ukuqokwa kukaNdunankulu

31. (1) IsiShayamthetho sesiFundazwe kumele siqoke uNdunankulu phakathi kwamalungu aso emhlanganweni waso wokuqala, noma uma kudingeka ukuthi kugwalise isikhala.
- (2) Ijaji eliqokwe yiJaji eliKhulu kumele lengamele ukuqokwa kukaNdunankulu.
- (3) Inqubo ebekwe oHlelweni 2 lwalo Mthethosisekelo isebenza ekuqokweni kukaNdunankulu.
- (4) Ukhetho lokugwalisa isikhala ehhovisi likaNdunankulu kumele lwenziwe ngosuku nangesikhathi esinqunywe yiJaji eliKhulu, kodwa zingakapheli izinsuku ezingamashumi amathathu lesi sikhala sivelile.

Ukuqala kokusebenza kukaNdunankulu

32. UNdunankulu oqokiwe kumele aqale ukusebenza ezinsukwini ezinhlanu eqokiwe, ngokufunga nokuqinisekisa ukuthi uzothembeka kwiRiphabhuliki naKwaZulu-Natali nokuthi uyothobela uMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo, ngokuhambisana nohlamvu 2 loHlelo 1.

Isikhathi sesikhundla kanye nokususwa esikhundleni kukaNdunankulu

33. (1) Isikhathi sokubenza kukaNdunankulu siqala mhla uNdunankulu eqala ukusebenza siphele uma kuvela isikhala noma uma umuntu oqokwa njengoNdunankulu olandelayo eqala ukusebenza.
- (2) Akukho muntu oyoba sesikhundleni sikaNdunankulu izihlandla ezingaphezu kwezimbili, kodwa uma umuntu eqokelwe ukugwalisa isikhala sikaNdunankulu, esikhathini esiphakathi kwalolo khetho nokhetho olulandelayo lukaNdunankulu akuthathwa ngokuthi ubekuleso sikhundla.
- (3) IsiShayamthetho sesiFundazwe, ngesinqumo esithathwe ngevoti lokwesekela lamalungu aso okungenani amabili kwamathathu, singakhipha uNdunankulu esikhundleni ngalezi zizathu:
- (a) ukwephulwa kanzima koMthethosisekelo kazwelonke, lo Mthethosisekelo noma umthetho;
 - (b) ukuziphatha kabi; noma
 - (c) ukwehluleka ukwenza imisebenzi yesikhudla sakhe.
- (4) Noma ngubani osusiwe esikhundleni sokuba nguNdunankulu ngokwesigatshana (3)(a) noma (b) angeke athole mivuzo yaleso sikhundla, futhi angeke asebenze kunoma yimuphi uhulumeni.

IBamba likaNdunankulu

34. (1) Uma uNdunankulu engekho noma ngesinye isizathu engakwazi ukwenza imisebenzi yakhe, noma ngesikhathi kunesikhala kuleso sikhundla, isiphathimandla esisohlwini olulandelayo singasebenza njengoNdunankulu —
- (a) iLungu loMkhandlu oPhethe eliqokwe nguNdunankulu;
 - (b) iLungu loMkhandlu oPhethe eliqokwe ngamanye amalungu oMkhandlu oPhethe; noma
 - (c) uSomlomo, kuze kube isiShayamthetho sesiFundazwe siqoka elinye lamalungu aso.
- (2) IBamba likaNdunankulu linezibopho, namandla nemisebenzi kaNdunankulu.
- (3) Ngaphambi kokuthatha izibopho, amandla nemisebenzi kaNdunankulu, iBamba likaNdunankulu kumele lifunge noma liqinisekise ukwethembeka kwiRiphabhuliki nokukhobela uMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo, ngokuhambisana nohlamvu 2 loHlelo 1.

Ukubunjwa nokuqokwa koMkhandlu oPhethe

35. (1) UMkhandlu oPhethe ubunjwe nguNdunankulu, njengenhloko yoMkhandlu oPhethe, kanye —
- (a) namalungu angengaphansi kwayisishiyagalombili kodwa angeqile kwayishumi nambili oMkhandlu oPhethe aqokwe nguNdunankulu phakathi kwamalungu esiShayamthetho esiFundazwe; kanye
 - (b) nelungu elilodwa ngaphezulu loMkhandlu oPhethe elifanelekile, kodwa, elingelona ilungu lesiShayamthetho sesiFundazwe; Inqobo nje uma uNdunankulu ethatha lokho kuqokwa kwelinye ilungu loMkhandlu oPhethe ngokushesha.
- (2) UNdunankulu uqoka amalungu oMkhandlu oPhethe, awabele amandla nemisebenzi, futhi angawaxosha.

Isibopho sokubika kanye nezinye izibopho zamalungu oMkhandlu ophethe

36. (1) Amalungu oMkhandlu oPhethe anesibopho sokwenza imisebenzi yoMkhandlu abelwe yona nguNdunankulu.

- (2) Amalungu oMkhandlu oPhethe anesibopho sokubika ewonke nangalinye kwisiShayamthetho sesiFundazwe sokuthi awasebenzisa kanjani amandla awo nokuthi ayenza kanjani imisebenzi yawo.
- (3) Amalungu oMkhandlu oPhethe kumele —
 - (a) aziphathe ngendlela ehambisana noMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo; futhi
 - (b) ahlinzeke isiShayamthetho sesiFundazwe ngemibiko egcwele ephathelene nemisebenzi elawulwa yiwo ngezikhathi ezithile.
- (4) Ilungu loMkhandlu oPhethe okukhulunywe ngalo esigabeni 35(1)(b) —
 - (a) lingethamela, futhi lingakhuluma, kwisiShayamthetho sesiFundazwe, futhi linelungelo elibekwe esigabeni 20 soMthethosisekelo;
 - (b) angeke lavota kwisiShayamthetho sesiFundazwe.

Ukuqhubeka koMkhandlu oPhethe emva kokhetho

37. Uma kubanjwe ukhetho lwesiShayamthetho sesiFundazwe, uMkhandlu ophethe kanye namalungu awo uyoqhubeka ukusebenza kuze kube umuntu oqokwe njengoNdunankulu yisiShayamthetho sesiFundazwe esilandelayo uqala ukusebenza.

Ukufunga nokuqinisekisa kwamalungu oMkhandlu oPhethe

38. Ngaphambi kokuthi amalungu oMkhandlu aqale ukwenza imisebenzi yawo, kumele afunge futhi aqinisekise ukuthi azokwethembe-ka kwiRiphabhuliki naKwaZulu-Natali futhi athobele uMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo, ngokuhambisana nohlamvu 2 loHlelo 1.

Ukuziphatha kwamalungu oMkhandlu oPhethe

39. (1) Amalungu oMkhandlu oPhethe kumele aziphathe ngendlela ehambisana nomgomo wokuziphatha obekwe ngumthetho kaZwelonke.
- (2) Amalungu oMkhandlu ophethe angeke —
 - (a) enza eminye imisebenzi ekhokhelwayo;
 - (b) aziphathe noma yingayiphi indlela engahambisani nezikhundla zawo, noma azibeke kunoma yisiphi isimo esingadala ukuthi abonakale enobunzima bokwehlukana phakathi kwezidingo zomisebenzi nezidingo zawo zangasese;
 - (c) asebenzise izikhundla zawo noma ulwazi lwanoma yiluphi uhlobo anikezwe lona ukuzenzela inzuzo noma ukwenzela noma yimuphi omunye umuntu inzuzo ngokungafanele.

Ukudluliselwa kwemisebenzi kumalungu oMkhandlu oPhethe

40. UNdunankulu ngesimemezelo kwiGazethi yesiFundazwe angadlulisela kwilungu loMkhandlu oPhethe —
 - (a) ukuphathwa kwanoma yimuphi umthetho okunikezwe elinye ilungu; noma
 - (b) amandla noma umsebenzi onikezwe elinye ilungu ngokomthetho.

Ukunikezwa kwemisebenzi okwesikhashana kumalungu oMkhandlu oPhethe

41. UNdunankulu anganikeza ilungu loMkhandlu oPhethe noma yimaphi amandla noma umsebenzi welinye ilungu elingekho noma elingakwazi ukusebenzisa lawo mandla noma ukwenza lowo msebenzi.

Iziphakamiso zokungethembeke koMkhandlu oPhethe noma kukaNdunankulu

42. (1) Uma isiShayamthetho sesiFundazwe, ngevoti elesekelwa yiningi lamalungu aso, samukela isiphakamiso sokungethembeke koMkhandlu oPhethe, ngaphandle kukaNdunankulu, uNdunankulu kumele abumbe kabusha uMkhandlu oPhethe.
- (2) Uma isiShayamthetho sesiFundazwe, ngevoti elamukelwe yiningi lamalungu, samukela isiphakamiso sokungethembeke kukaNdunankulu, uNdunankulu kanye namanye amalungu oMkhandlu oPhethe kumele besule.

ISAHLUKO 4

UBUKHOSI BENDABUKO

Isikhundla, ukuhlonishwa kanye nesikhungo sobuKhosi

43. (1) KuneNgonyama esiFundazweni saKwaZulu-Natali.
- (2) ISilo samaZulu esikhona njengamanje sithathwa njengeNgonyama yesiFundazwe saKwaZulu-Natali.
- (3) Ngaphambi kokuqala ukusebenza ngaphansi kwalo Mthethosisekelo, iNgonyama kumele, emgidini okhethekile ohlelelwe lokhu, ifunge iqinisekise ukwethembeka kwayo kwiRiphabhuliki yaseNingizimu Afrika nasesiFundazweni saKwaZulu-Natali kanye nokuthobela uMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo, ngokuhambisana nohlamvu 3 loHlelo 1.
- (4) (a) Umthetho wesifundazwe kanye nomthetho wesintu kumele unqume ubudlelwano phakathi kweNgonyama kanye —
 - (i) neNdlu yabaHoli beNdabuko yesiFundazwe; kanye
 - (ii) naMakhosi akulesi siFundazwe.
- (b) INgonyama kumele yenze konke okuphathelene nesikhundla sayo ngokuhambisana noMthethosisekelo kaZwelonke, lo Mthethosisekelo, imithetho yesifundazwe kanye nemithetho yesintu.
- (5) INgonyama ingathintwa nguMkhandlu oPhethe noma yingaluphi udaba oluphathelene nohulumeni wesifundazwe.

Ukuthatha izintambo zobukhosi

44. (1) Isikhundla sobuKhosi, njengoba sibekiwe ngaphansi koMthethosisekelo kaZwelonke kanye nalo Mthethosisekelo, sithathwa ngowozalo futhi sinqunywa —

- (a) ngumthetho wendabuko osebenza kuleso sikhungo sobuKhosi bamaZulu; noma
- (b) ngumthetho wesifundazwe omiswe emva kokuqala ukusebenza kwalo Mthethosisekelo;
- (2) (a) Isikhala esikhundleni seNgonyama esivele ngenxa yokukhothama kweNgonyama noma yokulahlwa kobukhosi, kweyame esigabeni 45(1)(a), kumele sigcwaliswe ngokushesha ngokuhambisana —
 - (i) nomthetho wendabuko okukhulunywe ngawo esigabeni 44(1)(a); noma
 - (ii) umthetho wesifundazwe okukhulunywe ngawo esigabeni 44(1)(b).
- (b) Kweyame emthethweni wesifundazwe okukhulunywe ngawo esigabeni 44(1)(b) —
 - (i) iNdlunkulu kumele yazise uNdunankulu ngemininingwane yomuntu ohlonzwe njengozothatha ubuKhosi ngokomthetho wesintu osetshenziswa kuleso sikhungo sobuKhosi bamaZulu; futhi
 - (ii) uNdunankulu kumele, *kwiGazethi* yesiFundazwe, ashicilele ukuze kwazi umphakathi wonkana isaziso esimemezela lowo ohlonzwe njengozothatha ubuKhosi.

Ukukhonjwa noma ukunikezwa isikhundla seBamba-Nkosi

45. (1) Uma ozothatha ubuKhosi —

- (a) eneminyaka engaphansi kwengamashumi amabili nanye ubudala, noma uma kukhothama noma kudunguzela iNkosi; noma
- (b) engekho KwaZulu-Natali isikhathi eside, isikhundla, imisebenzi nezibopho zeNkosi, kweyame emthethweni wesintu noma wesifundazwe okukhulunywe ngaso esigabeni 44(1)(b), kungaphathwa yiBamba-Nkosi elikhonjwe ngokwesigaba 45(2).
- (2) Ezimweni ezibekwe —
 - (a) esigabeni (1)(a), iBamba-Nkosi kumele likhonjwe ngokuhambisana nomthetho wesintu futhi iNdlunkulu kumele, ngokushesha, yazise uNdunankulu ngemininingwane yomuntu okhonjwe njengeBamba-Nkosi; noma
 - (b) esigatshaneni (1)(b), iNgonyama kumele iqoke iBamba-Nkosi ngokubonisana nabeluleki baseNdlunkulu ngokuhambisana nomthetho wendabuko futhi iNgonyama kumele, ngokushesha, yazise uNdunankulu ngemininingwane yomuntu okhonjwe njengeBamba-Nkosi.
- (3) Kweyame emthethweni wesifundazwe okukhulunywe ngawo esigabeni 44(1)(b), uNdunankulu kumele, *kwiGazethi* yesiFundazwe, ashicilele ukuze kwazi umphakathi wonkana isaziso esimemezela umuntu okhonjwe njengeBamba-Nkosi ngokwesigaba 45(2).
- (4) Ngaphambi kokuqala ukusebenza iBamba-Nkosi, emcimbini okhethekile, kumele lifunge noma liqinisekie ukuthi liyokwethembeka kwiRiphabhuliki yaseNingizimu Afrika nasesiFundazweni saKwaZulu-Natali futhi lithobele uMthethosisekelo kazwelonke kanye nalo Mthethosisekelo, ngokuhambisana nohlamvu 3 loHlelo 1.
- (5) (a) IBamba-Nkosi lisetshenziswa ngokoMthethosisekelo nasegameni leNdlunkulu.
 - (b) Kweyame kwizihlinzeko zomthetho wesifundazwe okukhulunywe ngawo esigabeni 44 (1)(b), iBamba-Nkosi elisetshenziswa ngokwalesi sigaba iphela ngosuku olwandulela usuku —
 - (i) lokushicilelwa kwesaziso okukhulunywe ngalo esigabeni 44(b)(ii);
 - (ii) iNkosi eqeda iminyaka engamashumi amabili nanye ngalo;
 - (iii) iNkosi esiluleme ngalo; noma
 - (iv) iNkosi ebuyela ngalo KwaZulu-Natali.
- (6) Kweyame kwizihlinzeko zomthetho wesifundazwe okukhulunywe ngawo esigabeni 44(1)(b), iBamba-Nkosi lithola umholo kanye nemivuzo njengoba kunqume isiShayamthetho sesiFundazwe.

Iqhaza, izibopho, amandla kanye nemisebenzi yeNgonyama

46. (1) INgonyama kumele —

- (a) isekele uMthethosisekelo kazwelonke, lo Mthethosisekelo kanye nemithetho yaKwaZulu-Natali;
- (b) ihloniphe ukwehlukahlukana kwamisiko abantu baKwaZulu-Natali okuyingqayizivele;
- (c) iphokophelele ukuba wuphawu lobumbano kubantu baKwaZulu-Natali; futhi
- (d) igququzele ukuthula, uxolo kanye nokwakha isizwe.
- (2) INgonyama isebenzisa lawo mandla, igcine izibopho kanye nemisebenzi okudluliselwe kuyona, noma eyinikezwe —
 - (a) nguMthethosisekelo;
 - (b) ngumthetho wendabuko;
 - (c) umthetho kazwelonke, kubandakanya izibopho kanye nemisebenzi ejwayelekile noma ekhethekile edluliselwe, noma enikezwe iNgonyama noma uNdlunkulu ngomthethonqubo owenziwe ngokohlaka lomthetho kazwelonke ophathelene nobuholi bendabuko kanye nokuphatha; kanye
 - (d) nomthetho wesifundazwe.
- (3) INgonyama, ngaphezu kwanoma yiliphi iqhaza eliphathelene nezendabuko, imicimbi, izibopho noma imisebenzi okudluliselwe kuyona, noma enikezwe kona, ngokomthethonqubo owenziwe ngohlaka lomthetho ophathelene nobuholi bendabuko kanye nokuphatha —

- (a) kweyame emithethweni nakwimiyalelo yesiShayamthetho sesiFundazwe, ingavula noma ibingelele kwisiShayamthetho sesiFundazwe;
- (b) kweyame kwisinqumo zeNdlu yabaHoli beNdabuko yesiFundazwe, iyovula noma ikhulumele iNdlu yabaHoli beNdabuko yesiFundazwe;
- (c) kweyame kwisinqumo soMkhandlu oPhethe kanye nanoma yimuphi umyalelo noma umbandela obekwe nguMkhandlu oPhethe —
 - (i) iyodlulisa ukubonga nokuneziphakamiso;
 - (ii) iyohlangana neziphakanyiswa zakwamanye amazwe;
 - (iii) iyomela iKwaZulu-Natali kwezamaSiko kwiRiphabhuliki yaseNingizimu Afrika naphesheya kwezilwandle;
- (d) kweyame kwisinqumo soMkhandlu oPhethe, iyovula noma ibingelele emihlanganweni yomgwamanda weminyango ehlukehlukene noma yohlaka;
- (e) kweyame kwisinqumo soMkhandlu kaMasipala, iyovula noma ibingelele emihlanganweni yoMkhandlu kaMasipala; futhi
- (f) kweyame kwisinqumo seNdlu yabaHoli beNdabuko, iyovula noma ibingelele imihlangano yeNdlu yabaHoli beNdabuko.
- (4) Uphawu lobumbano kubantu baKwaZulu-Natali —
 - (a) angeke ibambe iqhaza kwezepolitiki; noma
 - (b) izwakalise ukuchema, nokweseka, noma ukuphikisana, nanoma yiliphi iqembu lezombusazwe.

Ukuxhumana neNgonyama

47. IsiShayamthetho sesiFundazwe kanye noMkhandlu oPhethe ungaqinisekisa ubudlelwano phakathi kweNgonyama —

- (a) nesiShayamthetho sesiFundazwe;
- (b) noMkhandlu oPhethe; kanye
- (c) neMikhandlu kaMasipala.

Isabelo seziMali seNgonyama

48. (1) Kunesabelo sezimali seNgonyama.

(2) Isabelo sezimali seNgonyama —

- (a) simele imali ekhokhwa nguHulumeni wesiFundazwe ukuhlinzekela ukondliwa kanye nezindleko zaseNdlunkulu; futhi
- (b) kumele samukelwe njalo ngonyaka ngokoMthetho woKwabiwa kweziMali wesiShayamthetho sesiFundazwe.
- (3) UNdunankulu, noma ilungu loMkhandlu oPhethe eliqokwe nguNdunankulu, unesibopho njengomuntu onegunya lokuphatha iSabelo seziMali seNgonyama futhi kumele aqoke isiphathimandla sezimali eMnyangweni wesiFundazwe ukubhekelela nokwengamela ukuphathwa kweSabelo seziMali seNgonyama ngokuhambisana noMthetho wokuPhathwa kweziMali zikaHulumeni, 1999 (uMthetho No. 1 ka 1999).

ISAHLUKO 5

UKUPHATHWA KWESIFUNDAZWE

IkoMkhulu lokuPhathwa kwesiFundazwe

- 49. (1) UNdunankulu, ngokusebenzisana namalungu oMkhandlu oPhethe, anganquma ikoMkhulu lokuPhathwa kwesiFundazwe likaHulumeni waKwaZulu-Natali.
- (2) Ngezinhlalo zokuqinisekisa ukwenziwa kwemisebenzi ngendlela esheshayo nenemiphumela ebonakalayo uNdunankulu, ngokusebenzisana nelungu lomkhandlu oPhethe, anganquma noma akhiphe umyalelo wokuthi uMnyango kaHulumeni usungule noma ugcine ihhovisi lesifunda kunoma iyiphi indawo efanele esifundazweni.

ISAHLUKO 6

IZINHLINZEKO EZEJWAYELEKILE

Amalungiselelo esikhashana

50. UHlelo 3 lukhuluma ngoquko ngohlelo loMthethosisekelo omusha KwaZulu-Natali osungulwe yilo Mthethosisekelo, kanye nokunye okuphathelene nalolo guquko.

Isihloko esifishane kanye nokuqalisa

- 51. (1) Lo Mthetho ubizwa ngoMthethosisekelo waKwaZulu-Natali, 2004, kanti uyoqala ukusebenza ngosuku olunqunywe nguNdunankulu ngesimememezelelo kwiGazethi yesiFundazwe.
- (2) UNdunankulu anganquma izinsuku ezahlukeni maqondana nokuqala kwezinhlinzeko wzahlelene zoMthethosisekelo.
- (3) Ngaphandle uma ingqikithi isho okwehlukile, inkomba kwinhlinzeko yalo mthethosisekelo ngesikhathi lo Mthethosisekelo okumele ube ngumthetho kumele ihunyushwe njengekhomba yesikhathi inhlinzeko eyaqala ngaso ukusebenza.

UHLELO 1

IZIFUNGO KANYE NEZIQINISEKISO
(Izigaba 11, 32, 34(3), 38, 43(3) kanye no 45(4))

Isifungo noma isiqinisekiso samalungu esiShayamthetho sesiFundazwe

1. (1) Amalungu esiShayamthetho sesiFundazwe, ngaphambili kweJaji eliKhulu leNkantolo noma ijaji eliqokwe yiJaji eliKhulu leNkantolo, kumele afunge noma aqinisekise ngale ndlela elandelayo:

Mina, Sibanibani, ngiyafunga/ngiyaqinisekisa ukuthi ngizokwethembeka kwiRiphabhuliki yaseNingizimu Afrika kanye nasesiFundazweni saKwaZulu-Natali futhi ngizothobela, ngihloniphe futhi ngiphakamise uMthethosisekelo kazwelonke, uMthethosisekelo wesifundazwe kanye nayo yonke imithetho yeRiphabhuliki, futhi ngiyathembisa ukwenza imisebenzi yami njengalungu lesiShayamthetho sesiFundazwe ngawo wonke amandla enginawo.

(Uma kuyisifungo: iNkosi ingiSize)

- (2) Abantu abagwalisa izikhala ezikhona kwisiShayamthetho sesiFundazwe bangafunga noma baqinisekise ngokwesigatshana (1) ngenhla, ngaphambi kwesiphathimandla esengamele isiShayamthetho sesiFundazwe.

Isifungo noma isiqinisekiso sikaNdunankulu, iBamba likaNdunankulu kanye namalungu oMkhandlu oPhethe

2. UNdunankulu noma iBamba likaNdunankulu wesifundazwe kanye neLungu ngalinye loMkhandlu oPhethe, ngaphambi kweJaji eliKhulu leNkantolo noma kwejaji eliqokwe yiJaji eliKhulu leNkantolo, kumele bafunge noma baqinisekise ngale ndlela elandelayo:

Mina, Sibanibani, ngiyafunga/ngiyaqinisekisa ukuthi ngizokwethembeka kwiRiphabhuliki yaseNingizimu Afrika kanye nasesiFundazweni saKwaZulu-Natali futhi ngizothobela, ngihloniphe futhi ngiphakamise uMthethosisekelo kaZwelonke, uMthethosisekelo wesifundazwe kanye nayo yonke imithetho yeRiphabhuliki, futhi ngiyathembisa ukuphatha isikhundla sami njengoNdunankulu/njengeBamba likaNdunankulu/ njengeLungu loMkhandlu oPhethe KwaZulu-Natali ngenhlonipho nangesithunzi, ukuba ngumaluleki weqiniso nowethembekile; ukungadlulisi ngokusobala noma ngendlela ecashile noma yiluphi udaba oluyimfihlo engethenjwe ngalo; futhi ukwenza imisebenzi yesikhundla sami ngokwethembeka nangawo wonke amandla enginawo.

Isifungo noma isiqinisekiso seNgonyama noma iBamba leNkosi

3. INkosi noma iBamba leNkosi, ngaphambi kweJaji eliKhulu noma ijaji eliqokwe yiJaji eliKhulu, kumele ifunge noma iqinisekise ngale ndlela elandelayo:

Mina, Sibanibani, ngiyafunga/ngiyaqinisekisa ukuthi ngizothembeka kwiRiphabhuliki yeNingizimu Afrika kanye nasesiFundazweni saKwaZulu-Natali futhi ngizothobela, ngihloniphe futhi ngiphakamise uMthethosisekelo kazwelonke, uMthethosisekelo wesifundazwe kanye nayo yonke imithetho yeRiphabhuliki, futhi ngiyathembisa ukuphatha isikhundla sami njengeNkosi/njengeBamba leNkosi yaKwaZulu-Natali ngenhlonipho nangesithunzi, ukugqambisa amagugu kanye namasiko abantu baKwaZulu-Natali akhethekile nahlukehlekene, ukuveza isithombe esihle sobumbano kubantu baKwaZulu-Natali, ukugqaguzela ukuthula, ukusima kanye nokwakha isizwe; ukungazibandakanyi nganoma iyiphi indlela kweziphathelene nezombusazwe; ukungadlulisi ngokusobala noma ngendlela ecashile noma yiluphi udaba oluyimfihlo engethenjwe ngalo; futhi ukwenza imisebenzi yesikhundla sami ngokwethembeka nangawo wonke amandla enginawo.

UHLELO 2

IZINQUBO ZOKHETHO
(Izigaba 15(2) no 31(3))

Ukusetshenziswa

1. Izinqubo ezibekiwe kulolu Hlelo zisetshenziswa lapho kuhlangele amaLungu esiShayamthetho sesiFundazwe ezokhetha uNdunankulu waKwaZulu-Natali noma uSomlomo (noma iSekela likaSomlomo) wesishayamthetho sesiFundazwe.

Isiphakamiso

2. Umuntu owengamele umhlango osebentisa lolu Hlelo, kumele acele ukuphakanyiswa kwabantu abasemhlanganweni.

Okudingekayo

3. (1) Isiphakamiso kumele senziwe ngendlela esemthethweni ebekwe yimithetho okukhulunywe ngayo ohlamvini 9.
(2) Ifomu okwenziwe kulo iziphakamiso kumele lisayinwe ngamalungu amabili esiShayamthetho sesiFundazwe, uma kuzokhethwa uNdunankulu wesifundazwe noma uSomlomo (noma iSekela likaSomlomo) wesishayamthetho sesiFundazwe.
(3) Umuntu ophakanyisiwe kumele akhombise ukuthi uyasamukela isiphakamiso ngokusayina ifomu lesiphakamiso nanganoma iyiphi enye indlela ekhombisa ukwamukelwa kwesiphakamiso.

Ukumenyezelwa kwamagama abamele ukhetho

4. Emhlanganweni okusetshenziswa kuwo lolu Hlelo, usihlalo womhlangano kumele amemezele amagama abantu abaphakanyiswe njengabamele ukhetho, kodwa akumele avumele inkulumbo-mpikiswano.

Omele ukhetho eyedwa

5. Uma kuphakanyiswe igama lomuntu oyedwa ozomela ukhetho, usihlalo womhlangano kumele amemezele igama lokhethiwe.

Inqubo yokhetho

6. Uma kuphakanyiswe abantu abangaphezulu komuntu oyedwa —
(a) kumele kuvotelwe emhlanganweni ngendlela eyimfihlo;

- (b) ilungu ngalinye emhlanganweni livota ngevoti elilodwa; futhi
- (c) umuntu owengamele umhlangano kumele amemezele ukuthi bakhethiwe labo abathole iningi levoti.

Inqubo yokuchitha abanye

7. (1) Uma kungekho muntu omele ukhetho othole amavoti amaningi, lowo muntu othole isibalo esincane samavoti kunesabanye kumele achithwe bese kuvotelwa kulabo abasele ngokuhambisana nesigatshana 6 ngenhla. Le nqubo kumele iphindaphindwe kuze kube khona othola amavoti amaningi.
- (2) Uma kusetshenziswa isigatshana (1) esingenhla, uma kunababili noma ngaphezulu kwababili abanesibalo esincane samavoti, kumele kuvotwe ngokwehlukana kuvotelwa laba bantu futhi kuphindaphindwe uma kunesidingo sokuchitha abafanele uku-chithwa.

Eminye imihlangano

8. (1) Uma kukhethwe ababili, noma uma kusele ababili emuva kokusebenzisa inqubo yokuchitha, futhi labo abasele benesibalo samavoti alinganayo, kumele kubanjwe omunye umhlangano ezinsukwini eziyisikhombisa, ngesikhathi esibekwe ngowengamele umhlangano.
- (2) Uma umhlangano ubanjwe ngokwesigatshana (1) esingenhla, inqubo ebekwe kulolu Hlelo kumele isetshenziswe kulowo mhlango kube sengathi umhlangano wokuqala walolu khetho.

Imithetho

9. (1) IJaji eliKhulu leNkantolo kumele lenze imithetho ebeka —
 - (a) inqubo yemihlangano esebenzisa lolu Hlelo;
 - (b) imisebenzi yanoma ngubani owengamele kulowo mhlango, kanye neyanoma ubani osiza owengamele lowo mhlango;
 - (c) ifomu okwenziwa kulo iziphakamiso; kanye
 - (d) nendlela okufanele kuvotwe ngayo.
- (2) Le mithetho kumele ikhishwe ngendlela enqunywe yiJaji eliKhulu leNkantolo.

UHLELO 3

AMALUNGISELELO OGUQUKO

(Isigaba 50)

Ukuhunyushwa komthetho okhona

1. Ngaphandle uma kungahambisani nalokho okuqonde ukushiwo noma kungamukelekile, uma kukhulunywa ngomthetho owawukhona ngesikhathi lo Mthethosisekelo uba semthethweni, kwisiShayamthetho sesiFundazwe, kuNdunankulu, eMkhandlwini wesiFundazwe noma kuNgqongqoshe wesiFundazwe, kumele uthathwe ngokuthi ukhuluma ngesiShayamthetho sesiFundazwe, uNdunankulu, uMkhandlu oPhethe, nama iLungu loMkhandlu oPhethe ngaphansi kwalo Mthethosisekelo.

IsiShayamthetho sesiFundazwe

2. (1) Noma ngubani oyilungu noma osebenza emahhovisi esiShayamthetho sesiFundazwe ngesikhathi lo Mthethosisekelo uba semthethweni, uzoba yilungu futhi asebenze ehovisi lesiShayamthetho sesiFundazwe ngokwalo Mthethosisekelo.
- (2) IsiShayamthetho sesiFundazwe njengoba kukhulunywe ngaso esigatshaneni (1) kumele sithathwe njengesikhethwe ngaphansi kwalo Mthethosisekelo esikhathini esiyoze sipele ngosuku lwe-13 kuMbasa 2009.
- (3) Ngesikhathi sokusebenza esiphela ngosuku lwe-13 kuMbasa 2004, kodwa kweyame esigabeni 12(4) salo Mthethosisekelo, isiShayamthetho sesiFundazwe sakhiwe ngamalungu angama-80.
- (4) Imithetho kanye nezinqubo zesiShayamthetho sesiFundazwe ezisebenza ngesikhathi lo Mthethosisekelo uba semthethweni futhi uqhubeka nokusebenza, kweyame kunoma yisiphi isichibiyelo noma ukuchithwa.

Izifungo kanye neziqinisekiso

4. Umuntu oqhubeka nokuba sesikhundleni ngokwalolu Hlelo futhi owenze izifungo sesikhundla noma owenze isiqinisekiso ngaphansi koMthethosisekelo kaZwelonke, akaphokelekile ukwenza futhi izifungo saleso sikhundla noma isiqinisekiso ngaphansi kwalo Mthethosisekelo.

Izithunywa zoMkhandlu kaZwelonke weziFundazwe

5. IsiShayamthetho sesiFundazwe, kuze kumiswe uMthetho wePhalamende ngokwesigaba 65(2) soMthethosisekelo kaZwelonke, emithethweni yaso singahlinzekela ukudluliselwa kwamagunya kulezo zithunywa zoMkhandlu kaZwelonke weziFundazwe ukuthi zisebenze futhi zizikhankasele amavoti eMkhandlwini.

UMkhandlu oPhethe

6. (1) Noma ubani onguNdunankulu ngesikhathi lo Mthethosisekelo uba semthethweni, uyaqhubeka nesikhundla sakhe sokuba nguNdunankulu ngokwalo Mthethosisekelo.
- (2) Noma ubani oyilungu loMkhandlu oPhethe ngesikhathi lo Mthethosisekelo uba semthethweni, uyaqhubeka nesikhundla sakhe sokuba yiLungu loMkhandlu oPhethe ngokwalo Mthethosisekelo.

Ukushaywa komthetho odingwa yilo Mthethosisekelo

7. Uma lo Mthethosisekelo udinga ukushaya umthetho kanye nezinqubo zesiShayamthetho sesiFundazwe, lowo mthetho kanye nalezo zinqubo kumele zimiswe noma zishaywe, ngumuntu ogunyaziwe ngesikhathi esamukelekile ngemuva kokuthi lo Mthethosisekelo usemthethweni.

**IMEMORANDAMU EPHATHELENE NEZINHLOSO
ZOMTHETHOSISEKELO OSELUHLAKA WAKWAZULU-NATALI, 2004**

1. UMLANDO

Ngesikhathi ethula inkulumbo ngesimo sesifundazwe mhlaka 25 kuNhlaba 2004, uNdunankulu waKwaZulu-Natali, wabeka ukuthi uMthethosisekelo wesiFundazwe uyobhalwa bese wethulwe kwisiShayamthetho sesiFundazwe ukuze udingidwe futhi wamukelwe ulungele ukuphasiswa yiNkantolo yoMthethosisekelo ekupheleni kukaLwezi 2004.

Inkulumbo kaNdunankulu ngesimo sesiFundazwe yethembisa ukusungula ukuhlonishwa ngokusemthethweni kweqhaza. Kwesikhundla kanye namandla eNgonyama, ekupheleni kwaLwezi 2004.

UNdunankulu wabuye wabeka ngokuzimisela ukukhulisa uMkhandlu oPhethe ukuqinisekisa ukuthi kunomkhandlu omele iningi kulesi siFundazwe.

Uhlaka loMthethosisekelo waKwaZulu-Natali, 2004, luzama ukugcina le misebenzi uNdunankulu azethwese yona.

2. Ukulungela kwesiFundazwe ukwamukela uMthethosisekelo wesiFundazwe

Isigaba 143 soMthethosisekelo kaZwelonke, 1996, sikhuluma ngokuqokethwe yiMthethosisekelo yeziFundazwe futhi sifundeka kanje:

- “143. (1) UMthethosisekelo wesiFundazwe, noma ukuchitshiyelwa komthethosisekelo, akumele kuhambisane nalo Mthethosisekelo, kodwa kungahlinzekela —
- (a) izinhloko zesifundazwe ezisemthethweni noma eziphethe kanye nezinqubo ezingehluka kulezo ezihlinzekelwe kulesi Sahluko; noma
 - (b) isikhungo, iqhaza, igunya kanye nesikhundla sobukhosi bendabuko, lapho bukhona.
- (2) Izinhlinzeko ezifakwe kuMthethosisekelo wesiFundazwe noma ekuchibiyelweni koMthethosisekelo ngokwendima (a) noma (b) yesigatshana (1) —
- (a) kumele zihambisane nokubalulwe esigabeni 1 kanye nokuseSahlukweni 3; futhi
 - (b) angeke zadlulisela noma yimaphi amandla noma imisebenzi esiFundazweni —
 - (i) okuwela ngaphandle kwezinga lamandla esifundazwe ngokweziNhlelo 4 no 5; noma
 - (ii) okuwela ngaphandle kwamandla nemisebenzi enikezwe isiFundazwe ngezinye izigaba zoMthethosisekelo.”

Ngakho-ke kusobala ukuthi uMthethosisekelo wesiFundazwe —

- (a) ungahlinzekela isikhungo, iqhaza, igunya kanye nesikhundla sobukhosi bendabuko, inqobo nje uma izinhlinzeko ezithintekayo ziwela ezindaweni ezingaphakathi kwezinga lamandla esifundazwe ngokweziNhlelo 4 no 5 zoMthethosisekelo kaZwelonke, 1996, futhi zihambisana noMthethosisekelo kaZwelonke, 1996; kanye
- (b) ungahlinzekela izinhloko zokuphatha ezahlelene, ezingabandakanya ukukhula, noma ushintsho ekubunjweni, koMkhandlu oPhethe wesiFundazwe.

3. Izinhlinzeko zoMthethosisekelo oseluhlaka waKwaZulu-Natali, 2004, eziphathelele nobuKhosi beNdabuko

UMthethosisekelo oseluhlaka waKwaZulu-Natali, 2004, zidingida udaba lobuKhosi beNdabuko besiFundazwe eSahlukweni 4 (imishwana 43-48).

Umshwana 43 uhlinzekela isikhundla, ukuhlonishwa kanye nesikhungo sobuKhosi baKwaZulu-Natali. ISilo samaZulu esikhona njengamanje sithathwa njengeNgonyama yesiFundazwe saKwaZulu-Natali. Lokhu kungokokuqala kusukela ngo 1897 ukuthi iSilo sihlonishwe ngokusemthethweni nguhulumeni esiFundazweni sethu.

ISilo kumele, ngaphambi kokuthi sithathe isikhundla, sifunge noma siqinisekise ukuthi sizokwethembeka kwiRiphabhuliki yaseNingizimu Afrika kanye nasesiFundazweni saKwaZulu-Natali futhi sithobele uMthethosisekelo kaZwelonke noMthethosisekelo wesiFundazwe.

Umshwana 44 ukhuluma ngokuthatha izintambo zobuKhosi futhi uhlinzekela ukulandela kowozalo ngokuhambisana nomthetho wendabuko noma nomthetho wesifundazwe.

Umshwana 45 uhlinzekela ukukhethwa noma ukuqokwa kweBamba leNkosi uma iNkosi ingaphansi kweminyaka engamashumi amabili nanye ubudala noma uma iNkosi ingekho esiFundazweni isikhathi eside.

Umshwana 46 uchaza kabanzi ngeqhaza, izibopho kanye nemisebenzi yeNkosi. Umthetho wesifundazwe ungangeza amandla noma unikeze iNkosi eminye imisebenzi. Njengophawu lobumbano kubo bonke abantu baKwaZulu-Natali, iNkosi angeke izimbandakanye namaqembu ezombusazwe noma ikhombise ukuchema nawo, noma ukuweseka noma ukuphikisana nawo.

Ukuxhumana neSilo kulawulwa ngumshwana 47.

Umshwana 48 uhlinzekela iSabelo seziMali seSilo esinezimvumelo ezikhokhwa nguHulumeni wesiFundazwe ukuhlinzekela ukondliwa kanye nezindleko zaseNdlunkulu. Lezi zimali kumele zamukelwe njalo ngonyaka ngokokwabiwa nguMthetho wesiShayamthetho sesiFundazwe kanye nesiphathimandla sezezimali eMnyangweni wesiFundazwe kumele silawule ukuphathwa kwalezi zimali.

4. Izinhlinzeko zoMthethosisekelo oseluhlaka waKwaZulu-Natali, 2004, eziphathelele nokubunjwa koMkhandlu oPhethe

UMthethosisekelo oseluhlaka waKwaZulu-Natali, 2004, ukhuluma ngokubunjwa koMkhandlu oPhethe wesiFundazwe emshwaneni 35.

Lo mshwana uhlongoza ukwenyuswa kwesibalo samalungu oMkhandlu oPhethe ube namalungu ayishumi nambili aqokwe nguNdunankulu phakathi kwamalungu esiShayamthetho sesiFundazwe kanye nelilodwa elingaba kodwa elingelona ilungu lesiShayamthetho sesiFundazwe.

Umswana 35 uveze isidingo somhlinzeko oqukethwe emshwaneni 36(4) ukuhlinzekela ukuthi uma uNdunankulu eqoka ilungu loMkhandlu oPhethe elingelona kodwa elingelona ilungu lesiShayamthetho sesiFundazwe, ukuthi lelo lungu lingethamela, futhi lingakhuluma, kwisiShayamthetho sesiFundazwe, futhi linelungelo lephalamende elibekwe emshwaneni 20, kodwa lelo lungu angeke lavota kwisiShayamthetho sesiFundazwe.

Umswana 35 uyofeza isifiso sikaNdunankulu sokusungula umkhandlu omele iningi lezakhamizi zesiFundazwe.

5. Isandulelo soMthethosisekelo oluHlaka waKwaZulu-Natali, 2004

Isandulelo soMthethosisekelo oluHlaka waKwaZulu-Natali, 2004, naso sidinga ukubalulwa.

Imibuzo ethize yaphakanyiswa ngokuphathelele nokukhulunywa eSandulelweni, mayelana nesisho esikhuluma ngokuthi "Ngokuzithoba kuNkulunkulu uSomandla" nange gama elithi "Thandaza".

INingizimu Afrika uHulumeni ophathelene nezomhlaba kanye noMthethosivivinyo wamaLungelo otholakala kwiSahluko 2 soMthethosisekelo kaZwelonke, 1996, eqinisekisa ngokukhululeka kwezenkolo, inkolelo kanye nemibono (isigaba 15).

UMthethosisekelo waseNtshonalanga Kapa, 1997 (owaqinisekiswa yiNkantolo yoMthethosisekelo) nawo uqukethe iSandulelo esikhuluma ngokuthi: "Ngokuzithoba kuNkulunkulu uSomandla".

Lolu daba lwaphakanyiswa ngokuphikisana nangokuthasisela ngabeNkantolo yoMthethosisekelo eCaleni CCT 6/97 (1997 (4) SA 795 CC: UkuQinisekiswa koMthethosisekelo waseNtshonalanga Kapa, 1997):

"iSandulelo

[28] iSandulelo soMthethosisekelo waseNtshonalanga Kapa uqala ngesisho esithi "Ngokuzithoba kuNkulunkulu uSomandla". Empikiswanweni kwabuzwa ukuthi lokhu kuphambene yini [noMthethosisekelo kaZwelonke, 1996] NC 15, okhuluma ngokuthi:

- (1) Wonke umuntu unelungelo lenkululeko yanembeza, inkolo, imicabango, ukukholwa kanye nemibono.
- (2) Ukugcinwa kwenkolo kungenzeka kuhulumeni noma ezikhungweni zikahulumeni, inqobo —
 - (a) uma kugcinwa imithetho emiswe ngabomphakathi abagunyazwe ngokufanelekile;
 - (b) uma kwenziwa ngendlela elingene; futhi
 - (c) uma ukulandelwa kwazo kukhululekile futhi kwenziwa ngokuzithandela kwabantu.
- (3) (a) Lesi sigaba asivimbeli ukuthi umthetho uhloniphe —
 - (i) imishado eyenziwe ngaphansi kwanoma yiluphi usiko, noma ngayiphi indlela yenkolo, umthetho womuntu qobo noma womndeni; noma
 - (ii) izindlela zomthetho zomuntu qobo kanye nomndeni ngaphansi kwanoma yiluphi usiko, noma kwabantu benkolo ethize.
- (b) Ukuhlonipha ngokwesigaba (a) kumele kuhambisane nalesi sigaba kanye nezinye izinhlinzeko zoMthethosisekelo.

Ukukhuleka kuNkulunkulu kulawa mazwi andulela kwiSandulelo [soMthethosisekelo waseNtshonalanga Kapa] akubalulekile emthethweni futhi nasesiphethweni senkulumo yeSandulelo kuMthethosisekelo kaZwelonke. Kuyindlela yasemandulo yokufaka isizotha esisetshenziswa emasikweni amaningi futhi nasezimweni eziningi.

Ngakho-ke, eMelika kunomshwana obizwa ngoMshwana wokuSungula, ohlukanisa indlu yesonto kanye nombuso, ukusetshenziswa kwesiqubulo sikazwelonke esithi ("Siyethemba kuNkulunkulu") futhi nokukhuluma ngoNkulunkulu eNkonzweni yesiFungo sefulegi kuthathwa "njengomkhosi wabavuma uNkulunkulu kodwa bephika ukuthi uyazibonakalisa". Lawa mazwi awanawo umsebenzi obalulekile emthethweni futhi awanabutha obuqavile emoyeni kanye nasezinjongweni zoMthethosisekelo kaZwelonke. Awasetshenziselwa ukuchaza izinhlinzeko zoMthethosisekelo kaZwelonke 15 ngendlela ekhawulisayo. Ngakho-ke lawa mazwi awanamphumela wamalungelo kwabakhohlwayo kanye nabangakhohla. Kulezi zimo akukho ukuphambana phakathi kwesandulelo soMthethosisekelo waseNtshonalanga Kapa kanye noMthethosisekelo kaZwelonke."

Kubekwe phansi ukuthi igama elithi: "Thandaza" njengoba lisetshenzisiwe kwiSandulelo soMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004, angeke ngokufanayo ucasule/ uthikameze uMthethosisekelo kaZwelonke, 1996, uma kwenziwa ngomqondo wokucela izibusiso kuNkulunkulu ezikhulekela iSandulelo.

Ngokweqiniso, uMthethosisekelo kaZwelonke, 1996, kanye neculo lesizwe leRiphabhuliki, kokubili kuqukethe izisho ezicela izibusiso kuNkulunkulu: "Nkosi sikelela i-Afrika." Njengoba kukhona nakuMthethosisekelo weNtshonalanga Kapa, 1997, kanye noMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004.

Isiphetho sithi, ukusetshenziswa kwezisho "Ngokuzithoba kuNkulunkulu uSomandla" kanye negama elithi "Thandaza" kuMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004, akuzubanga zinkinga zomthetho.

6. Izinhlinzeko ezisele zoMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004

Okunye kwezinhlinzeko eziqokethwe kuhlaka loMthethosisekelo waKwaZulu-Natali, 2004, lubuyisa okuningi okuhambisana nokuhlinzekwe kuMthethosisekelo kaZwelonke, 1996. Lezi zinhlinzeko zaziwa kakhulu futhi ezindaweni eziningi ziyazichaza kumuntu ozijwayeze noMthethosisekelo kaZwelonke, 1996.

7. Isikhundla soMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004

UMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004, umele isicelo esenziwe nguNdunankulu ukuthi luthunyelwe kusiShayamthetho sesiFundazwe ukuze kubonisiwane, kuxoxiswane ngalo futhi lubandakanye nomphakathi njengoba kubekiwe eMthethweni emiSiwe eLawulayo kusiShayamthetho sesiFundazwe.

Kulelo zinga, uMthethosisekelo oseluHlaka waKwaZulu-Natali, 2004, uzobhekelelwa yisiShayamthetho sesiFundazwe futhi izinqubo zaso zizobandakanya: izincomo zomphakathi (inyanga eyodwa); ukuzibandakanya komphakathi (izimbizo); izinkulumbo mpikiswano kanye nokubonisana, lapho uSomlomo wesiShayamthetho sesiFundazwe komele akhulume ngoMthethosisekelo

wesiFundazwe odluliswe eNkantolo yoMthethosisekelo ukuze uqinisekise njengokudingwa yisigaba 144(1) soMthethosisekelo kaZwelonke, 1996.

Kumele kuqaphelwe ukuthi uMthethosisekelo wesiFundazwe udinga iningi lamalungu okungenani amabili kwamathathu kwisiShayamthetho sesiFundazwe (isigaba 142 soMthethosisekelo kaZwelonke, 1996)

UMthethosisekelo wesiFundazwe uzoba semthethweni emuva kokuqinisekiswa yiNkantolo yoMthethosisekelo futhi usayinwe nguNdunankulu bese uqala ukusebenza ngosuku lokushicilelwa kwawo *kwiGazethi* kazwelonke (izigaba 45(1) no (2) zoMthethosisekelo kaZwelonke, 1996)

No. 22, 2004

10 November 2004

KWAZULU-NATAL CONSTITUTION, 2004

THE draft Constitution of KwaZulu-Natal as set out hereunder has been introduced in the KwaZulu-Natal Legislature. The public and other interested groups are invited to submit representations on the Constitution to the following address:

ATTENTION: Mr B. D. Sibisi

Head: House Proceedings

KwaZulu-Natal Legislature

Private Bag X 9112

PIETERMARITZBURG

3200

So as to reach him not later than the 1st of December 2004.

Copies of the draft Constitution can be obtained at Office No. 23, Greens Chambers, 239 Longmarket Street, Pietermaritzburg.

Mr S. E. Shange

Acting Secretary to the KwaZulu-Natal Legislature

DRAFT CONSTITUTION OF KWAZULU-NATAL, 2004

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PREAMBLE

In humble submission to Almighty God, we, the people of the KwaZulu-Natal —

INSPIRED by a desire to progress away from a history of conflict and violence toward a free, peaceful, safe and prosperous society for the present generation and posterity;

MINDFUL of our unique and diverse heritage and culture;

RECOGNISING and striving to heal the injustices of the past;

RECOGNISING the need for peace, reconciliation and justice;

RECOGNISING that individual freedom must be accompanied by obligations of social responsibility and duties to our fellow citizens and society;

ENDEAVOURING to promote the integrated and sustainable development of KwaZulu-Natal and a better quality of life for all its people through just and effective government; and

AFFIRMING that KwaZulu-Natal, a province of the Republic of South Africa, is founded on —

democratic values;

the recognition of human rights;

the recognition of the need for moral regeneration;

the recognition of the family;

the recognition of freedom of religion and worship;

the principles of mutual trust and co-operation;

co-operative, responsible and accountable government and good governance;

the Rule of Law; and

the recognition of, respect for, and loyalty to, the national Constitution as the supreme law of the Republic of South Africa;

DO NOW HEREBY THROUGH OUR ELECTED REPRESENTATIVES adopt this Constitution for KwaZulu-Natal.

WE PRAY —

that God will give our leaders wisdom, knowledge and understanding to govern and serve our people; and

that God will heal our land and protect our people.

Nkosi Sikelel' iAfrika. God Bless South Africa. God Seën Suid-Afrika.

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3. Adoption, status and interpretation of this Constitution
4. Application of this Constitution
5. KwaZulu-Natal Coat of Arms, provincial symbols and honours
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CHAPTER 1 FOUNDING PROVISIONS

Province of KwaZulu-Natal

1. KwaZulu-Natal is a Province of the Republic of South Africa as established by the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the national Constitution).

Boundaries of KwaZulu-Natal

2. The boundaries of KwaZulu-Natal are determined by the national Constitution.

Adoption, status and interpretation of this Constitution

3. (1) This Constitution is adopted for KwaZulu-Natal in terms of the national Constitution, the supreme law of the Republic of South Africa.
(2) The legislative and executive powers and functions of KwaZulu-Natal recorded in this Constitution emanate exclusively from the national Constitution.
(3) The provisions of this Constitution must not be interpreted as conferring any legislative or executive authority on KwaZulu-Natal which is inconsistent with the national Constitution.
(4) In the event of an inconsistency between different texts of this Constitution, the English text prevails.

Application of this Constitution

4. (1) This Constitution applies to KwaZulu-Natal.
(2) Subject to the national Constitution, this Constitution is the highest law in KwaZulu-Natal, and the obligations imposed by it must be performed diligently and without delay.

KwaZulu-Natal Coat of Arms, provincial symbols and honours

5. Provincial legislation may provide for —
 - (a) a coat of arms for the Province of KwaZulu-Natal;
 - (b) provincial symbols other than a coat of arms; and
 - (c) the conferral of provincial honours.

CHAPTER 2 PROVINCIAL LEGISLATURE

Legislative authority

6. (1) The legislative authority of KwaZulu-Natal is vested in the Provincial Legislature.
(2) The Provincial Legislature is bound only by the national Constitution and this Constitution, and must act in accordance with, and within the limits imposed by, these Constitutions.
(3) The Provincial Legislature may —
 - (a) replace, amend or repeal this Constitution;
 - (b) pass legislation for KwaZulu-Natal in terms of the national Constitution and in accordance with this Constitution;
 - (c) pass legislation for KwaZulu-Natal with regard to any matter assigned to KwaZulu-Natal by national legislation; and
 - (d) assign to a Municipal Council any of its legislative powers referred to in paragraph (b) and, where it is permitted to do so, any of its legislative powers referred to in paragraph (c).

(4) The Provincial Legislature may —

- (a) by a resolution recommend to the National Assembly that it passes legislation concerning any matter outside the Provincial Legislature's authority, or in respect of which an Act of Parliament prevails over provincial legislation;
- (b) by a resolution recommend to the National Council of Provinces that it passes legislation concerning any other matter; and
- (c) by a resolution adopted with a supporting vote of at least two thirds of its members request Parliament to change the name of the Province.

Bills to replace, amend or repeal this Constitution

7. A Bill to replace, amend or repeal this Constitution —

- (a) must be passed by the Provincial Legislature with a supporting vote of at least two thirds of its members; and
- (b) may include only constitutional provisions.

Composition of Provincial Legislature

8. (1) The Provincial Legislature consists of not more than 80 elected members.

- (2) The number of members must be determined in terms of a formula prescribed by national legislation.

Election of Provincial Legislature

9. The Provincial Legislature consists of persons elected as members in terms of an electoral system that —

- (a) is prescribed by national legislation;
- (b) is based on the Province's segment of the national common voters roll;
- (c) provides for a minimum voting age of 18 years; and
- (d) results, in general, in proportional representation.

Membership of Provincial Legislature

10. (1) Every citizen who is qualified to vote for the National Assembly is eligible to be a member of the Provincial Legislature, except —

- (a) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service, other than —
 - (i) the Premier and other members of the Executive Council of KwaZulu-Natal; and
 - (ii) other office-bearers whose functions are compatible with the functions of a member of the Provincial Legislature, and have been declared compatible with those functions by national legislation;

- (b) members of the National Assembly, permanent delegates to the National Council of Provinces or members of a Municipal Council;

- (c) unrehabilitated insolvents;

- (d) anyone declared to be of unsound mind by a court of the Republic; or

- (e) anyone who, after 3 February 1997, has been or is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic, but no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired. A disqualification under this paragraph ends five years after the sentence has been completed.

- (2) A person who is not eligible to be a member of the Provincial Legislature in terms of subsection (1)(a) or (b) may be a candidate for the Provincial Legislature, subject to any limits or conditions determined by national legislation.

- (3) A person loses membership of the Provincial Legislature if that person —

- (a) ceases to be eligible;

- (b) resigns as a member; or

- (c) is absent from the Provincial Legislature without permission in circumstances for which the rules and orders of the Provincial Legislature prescribe loss of membership.

- (4) Vacancies in the Provincial Legislature must be filled in terms of national legislation.

Oath or affirmation of members of Provincial Legislature

- 11. Members of the Provincial Legislature must swear or affirm faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 1 of Schedule 1, before they begin to perform their functions as members.

Duration of Provincial Legislature

- 12. (1) The Provincial Legislature is elected for a term of five years.

- (2) (a) When the Provincial Legislature is dissolved in terms of section 13 or when its term expires, the Premier must, by proclamation, call and set dates for an election, which must be held within 90 days of the date when the Provincial Legislature was dissolved or when its term expired.

- (b) A proclamation calling and setting dates for an election may be issued before or after the expiry of the term of the Provincial Legislature.

- (3) If the result of an election of the Provincial Legislature is not declared within the period referred to in section 190 of the national Constitution, or if an election is set aside by a court, another election must be held in terms of section 108(3) of the national Constitution.
- (4) The 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 Provincial Legislature.

Dissolution of Provincial Legislature before its term expires

13. (1) The Premier must dissolve the Provincial Legislature if —
 - (a) the Provincial Legislature has adopted a resolution to dissolve with a supporting vote of a majority of all its members; and
 - (b) three years have passed since the Provincial Legislature was elected.
- (2) An Acting Premier must dissolve the Provincial Legislature if there is a vacancy in the office of Premier and the Provincial Legislature fails to elect a new Premier within 30 days after the vacancy occurred.

Sittings and recess periods of Provincial Legislature

14. (1) After an election, the first sitting of the Provincial Legislature takes place at a time and on a date determined by a Judge designated by the Chief Justice, but not more than 14 days after the election result has been declared.
- (2) The Provincial Legislature may determine the times and duration of its other sittings and its recess periods.
- (3) The Premier may summon the Provincial Legislature to an extraordinary sitting at any time to conduct special or urgent business.
- (4) The Provincial Legislature may determine where it, and any of its committees, ordinarily will sit.

Speaker of Provincial Legislature

15. (1) The Provincial Legislature must elect a Speaker from amongst its members at the first sitting after its election, or when necessary to fill a vacancy.
- (2) (a) A Judge designated by the Chief Justice must preside over the election of the Speaker.
(b) The procedure set out in Schedule 2 to this Constitution applies to the election of the Speaker.
- (3) The Provincial Legislature may —
 - (a) elect a Deputy Speaker from among its members; and
 - (b) elect other presiding officers from among its members to assist the Speaker and the Deputy Speaker.
- (4) (a) The Provincial Legislature may remove the Speaker, Deputy Speaker and any other presiding officer by resolution.
(b) A majority of the members of the Provincial Legislature must be present when the resolution is adopted.

Quorum and decisions of Provincial Legislature

16. (1) Except where this Constitution provides otherwise —
 - (a) a majority of the members of the Provincial Legislature must be present before a vote may be taken on a Bill or an amendment to a Bill;
 - (b) at least one third of the members must be present before a vote may be taken on any other question before the Provincial Legislature; and
 - (c) all questions before the Provincial Legislature are decided by a majority of the votes cast.
- (2) The member presiding at a meeting of the Provincial Legislature has no deliberative vote, but —
 - (a) must cast a deciding vote when there is an equal number of votes on each side of a question; and
 - (b) may cast a deliberative vote when a question must be decided with a supporting vote of at least two thirds of the members of the Provincial Legislature.

Powers of Provincial Legislature

17. (1) In exercising its legislative authority, the Provincial Legislature may —
 - (a) consider, pass, amend or reject any Bill before it; and
 - (b) initiate or prepare legislation, except money Bills.
- (2) Subject to subsection (4), the Provincial Legislature must provide for mechanisms —
 - (a) to ensure that all provincial organs of state are accountable to it; and
 - (b) to oversee —
 - (i) the exercise of provincial executive authority, including the implementation of legislation; and
 - (ii) any provincial organ of state.
- (3) The Provincial Legislature may —
 - (a) determine and control its own internal arrangements, proceedings and procedures; and
 - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public participation.

- (4) The Provincial Legislature must in its rules and orders provide for —
- (a) the establishment, composition, powers, functions, procedures and duration of its committees;
 - (b) the participation in the proceedings of the Provincial Legislature and its committees of minority parties represented in the Provincial Legislature in a manner consistent with democracy;
 - (c) the conferral on its committees of such powers as are necessary for them to execute their mandate;
 - (d) co-ordination between the Provincial Legislature and its committees, and the National Council of Provinces;
 - (e) the receipt of petitions, representations or submissions from any interested person or institution; and
 - (f) financial and administrative assistance to each party represented in the Provincial Legislature, in proportion to its representation, to enable the party and its leader to perform their functions in the Provincial Legislature effectively.

Leader of Opposition in Provincial Legislature

18. The rules and orders of the Provincial Legislature must provide for the recognition of the Leader of the Opposition in the Provincial Legislature.

Evidence or information before Provincial Legislature

19. The Provincial Legislature or any of its committees may —
- (a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
 - (b) require any natural or juristic person or provincial organ of state to report to it;
 - (c) compel, in terms of provincial legislation or the rules and orders of the Provincial Legislature, any person or provincial organ of state to comply with a summons or requirement in terms of paragraph (a) or (b); and
 - (d) receive petitions, representations or submissions from any interested person or institution.

Privilege of members of Provincial Legislature and permanent delegates of KwaZulu-Natal to National Council of Provinces

20. Members of the Provincial Legislature and the permanent delegates of KwaZulu-Natal to the National Council of Provinces —
- (a) have freedom of speech in the Provincial Legislature and in its committees, subject to its rules and orders; and
 - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for —
 - (i) anything that they have said in, produced before or submitted to the Provincial Legislature or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Provincial Legislature or any of its committees.

Public access to proceedings of Provincial Legislature

21. (1) The proceedings of the Provincial Legislature and its committees take place in public, but reasonable steps may be taken —
- (a) to regulate public access, including access of the media, to the Provincial Legislature and its committees; and
 - (b) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of any person.
- (2) The public, including the media, may not be excluded from a sitting of a committee of the Provincial Legislature unless it is reasonable and justifiable to do so in an open and democratic society.
- (3) The Provincial Legislature must facilitate public participation in its activities and those of its committees.

Introduction of Bills in Provincial Legislature

22. (1) Only a Member of the Executive Council, a committee or member of the Provincial Legislature may introduce a Bill in the Provincial Legislature.
- (2) If the Bill is a money Bill, only the Member of the Executive Council responsible for financial matters may introduce it in the Provincial Legislature.

Money Bills

23. (1) A Bill is a money Bill if it —
- (a) appropriates money;
 - (b) imposes provincial taxes, levies, duties or surcharges;
 - (c) abolishes or reduces, or grants exemptions from, any provincial taxes, levies, duties or surcharges; or
 - (d) authorises direct charges against a Provincial Revenue Fund.
- (2) A money Bill may not deal with any other matter except —
- (a) a subordinate matter incidental to the appropriation of money;
 - (b) the imposition, abolition or reduction of provincial taxes, levies, duties or surcharges;
 - (c) the granting of exemption from provincial taxes, levies, duties or surcharges; or
 - (d) the authorisation of direct charges against a Provincial Revenue Fund.
- (3) A provincial Act must provide for a procedure by which the Provincial Legislature may amend a money Bill.

Assent to Bills by Premier

24. (1) The Premier of KwaZulu-Natal must within 45 days after a Bill has been passed by the Provincial Legislature —

- (a) assent to and sign the Bill; or
 - (b) if the Premier has reservations about the constitutionality of the Bill, refer it back to the Provincial Legislature for reconsideration.
- (2) If, after reconsideration, the Bill fully accommodates the Premier's reservations, the Premier must, within 45 days of the date of that reconsideration, assent to and sign the Bill; if not, the Premier must, within 45 days of the date of that reconsideration —
- (a) assent to and sign the Bill; or
 - (b) refer it to the Constitutional Court for a decision on its constitutionality.
- (3) If the Constitutional Court decides that the Bill is constitutional, the Premier must assent to and sign it within 14 days.

Publication and commencement of provincial Acts

25. (1) A Bill assented to and signed by the Premier becomes an Act of KwaZulu-Natal.
- (2) It must be published promptly in the *Official Gazette* of the Province and takes effect when it is published or on a date determined in terms of the Act.
- (3) Provincial legislation may provide for the dissemination and further publication of particulars of provincial Acts.

Safekeeping of provincial Acts

26. (1) The signed copy of an Act is conclusive evidence of its provisions.
- (2) After publication, the Act must be entrusted to the Constitutional Court for safekeeping.

CHAPTER 3 PROVINCIAL EXECUTIVE

Executive authority

27. (1) The executive authority of KwaZulu-Natal is vested in the Premier.
- (2) The Premier exercises the executive authority, together with the other members of the Executive Council, by —
- (a) implementing provincial legislation;
 - (b) implementing, to the extent that KwaZulu-Natal has the administrative capacity to assume effective responsibility, all national legislation within the functional areas listed in Schedule 4 or 5 of the national Constitution except where the national Constitution or an Act of Parliament provides otherwise;
 - (c) implementing national legislation outside the functional areas listed in Schedules 4 and 5 of the national Constitution, the administration of which has been assigned to the Executive Council in terms of an Act of Parliament;
 - (d) developing and implementing provincial policy;
 - (e) co-ordinating the functions of the provincial administration and its departments;
 - (f) preparing and initiating provincial legislation; and
 - (g) performing any other function assigned to the Executive Council in terms of the national Constitution or an Act of Parliament.
- (3) The provincial executive must act in accordance with the national Constitution and this Constitution.

Seat of Provincial Executive

28. The Provincial Executive may determine where it, and any of its committees, ordinarily or in any particular case, will sit.

Assignment of functions to Municipal Council

29. (1) A Member of the Executive Council may assign any power or function that is to be exercised or performed in terms of an Act of Parliament, or a provincial Act, to a Municipal Council.
- (2) An assignment —
- (a) must be in terms of an agreement between the relevant Member of the Executive Council and the Municipal Council;
 - (b) must be consistent with the Act in terms of which the relevant power or function is exercised or performed; and
 - (c) takes effect upon proclamation by the Premier in the *Official Gazette* of the Province.

Powers and functions of Premier

30. The Premier has the powers and functions entrusted to that office by the national Constitution, this Constitution and any legislation.

Election of Premier

31. (1) The Provincial Legislature must elect a Premier from among its members at its first sitting after its election, or when necessary to fill a vacancy.
- (2) A judge designated by the Chief Justice must preside over the election of the Premier.
- (3) The procedure set out in Schedule 2 of this Constitution applies to the election of the Premier.
- (4) An election to fill a vacancy in the office of the Premier must be held at a time and on a date determined by the Chief Justice, but not later than 30 days after the vacancy occurs.

Assumption of office by Premier

32. The Premier-elect must assume office within five days of being elected, by swearing or affirming faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 2 of Schedule 1.

Term of office and removal of Premier

33. (1) The Premier's term of office begins when the Premier assumes office and ends when a vacancy occurs or when the person next elected Premier assumes office.
- (2) No person may hold office as Premier for more than two terms, but when a person is elected to fill a vacancy in the office of Premier, the period between that election and the next election of a Premier is not regarded as a term.
- (3) The Provincial Legislature, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the Premier from office only on the grounds of —
- (a) a serious violation of the national Constitution, this Constitution or the law;
 - (b) serious misconduct; or
 - (c) inability to perform the functions of office.
- (4) Anyone who has been removed from the office of Premier in terms of subsection (3)(a) or (b) may not receive any benefits of that office, and may not serve in any public office.

Acting Premier

34. (1) When the Premier is absent or otherwise unable to fulfil the duties of the office of Premier, or during a vacancy in the office of Premier, an office-bearer in the order below acts as the Premier —
- (a) a Member of the Executive Council designated by the Premier;
 - (b) a Member of the Executive Council designated by the other members of the Executive Council; or
 - (c) the Speaker, until the Provincial Legislature designates one of its other members.
- (2) An Acting Premier has the responsibilities, powers and functions of the Premier.
- (3) Before assuming the responsibilities, powers and functions of the Premier, the Acting Premier must swear or affirm faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 2 of Schedule 1.

Composition and appointment of Executive Council

35. (1) The Executive Council consists of the Premier, as head of the Executive Council, and —
- (a) no fewer than eight and no more than twelve members of the Executive Council appointed by the Premier from among the members of the Provincial Legislature; and
 - (b) one additional member of the Executive Council who is eligible to be, but is not, a member of the Provincial Legislature: Provided that the Premier deems the appointment of such an additional member of the Executive Council expedient.
- (2) The Premier appoints the members of the Executive Council, assigns their powers and functions, and may dismiss them.

Accountability and responsibilities of members of Executive Council

36. (1) The members of the Executive Council are responsible for the functions of the executive assigned to them by the Premier.
- (2) Members of the Executive Council are accountable collectively and individually to the Provincial Legislature for how they exercise their powers and carry out their functions.
- (3) Members of the Executive Council must —
- (a) act in accordance with the national Constitution and this Constitution; and
 - (b) provide the Provincial Legislature with full and regular reports concerning matters under their control.
- (4) The member of the Executive Council referred to in section 35(1)(b) —
- (a) may attend, and may speak in, the Provincial Legislature, and is entitled to the privilege set out in section 20 of this Constitution;
 - (b) may not vote in the Provincial Legislature.

Continuation of Executive Council after elections

37. When an election of the Provincial Legislature is held, the Executive Council and its members remain competent to function until the person elected Premier by the next Provincial Legislature assumes office.

Oath or affirmation of members of Executive Council

38. Before members of the Executive Council begin to perform their functions, they must swear or affirm faithfulness to the Republic and KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 2 of Schedule 1.

Conduct of members of Executive Council

39. (1) Members of the Executive Council must act in accordance with the code of ethics prescribed by national legislation.
- (2) Members of the Executive Council may not —
- (a) undertake any other paid work;

- (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or
- (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person.

Transfer of functions to member of Executive Council

40. The Premier by proclamation in the *Official Gazette* of the Province may transfer to a member of the Executive Council —

- (a) the administration of any legislation entrusted to another member; or
- (b) any power or function entrusted by legislation to another member.

Temporary assignment of functions to member of Executive Council

41. The Premier may temporarily assign to a member of the Executive Council any power or function of another member who is absent from office or is unable to exercise that power or perform that function.

Motions of no confidence in Executive Council or Premier

42. (1) If the Provincial Legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Executive Council, excluding the Premier, the Premier must reconstitute the Executive Council.
- (2) If the Provincial Legislature, by a vote supported by a majority of its members, passes a motion of no confidence in the Premier, the Premier and the other members of the Executive Council must resign.

CHAPTER 4

TRADITIONAL MONARCH

Status, recognition, institution and office of Monarch

43. (1) There is a Monarch for the Province of KwaZulu-Natal.

- (2) The person currently holding office as the King of the Zulu nation, the King of *AmaZulu*, the *Ingonyama* or *Isilo* is, at the taking effect of this Constitution, regarded as the Monarch for the Province of KwaZulu-Natal.
- (3) Before assuming office under this Constitution, the Monarch must, in a special ceremony dedicated to this purpose, swear or affirm faithfulness to the Republic of South Africa and the Province of KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 3 of Schedule 1.
- (4) (a) Provincial legislation and customary law must determine the relationship between the Monarch and —
 - (i) the Provincial House of Traditional Leaders; and
 - (ii) *Amakhosi* in the Province.
- (b) The Monarch must do everything pertaining to the office of the Monarch in accordance with the national Constitution, this Constitution, provincial legislation and customary law.
- (5) The Monarch may be consulted by the Executive Council on any matter relating to the government of the Province.

Succession to office of Monarch

44. (1) The institution of the Monarchy, as recognised under the national Constitution and this Constitution, is hereditary in succession to the office of the Monarch and is determined by —
- (a) the customary law applicable to the institution of the Monarchy of *AmaZulu*; or
 - (b) provincial legislation enacted after the taking effect of this Constitution.
- (2) (a) A vacancy in the office of the Monarch caused by death or abdication must, subject to section 45(1)(a), be filled as soon as practicable in accordance with —
- (i) the customary law referred to in section 44(1)(a); or
 - (ii) provincial legislation referred to in section 44(1)(b).
- (b) Subject to provincial legislation referred to in section 44(1)(b) —
- (i) the Royal Family must inform the Premier of the particulars of the person identified as successor to the office of the Monarch by the customary law applicable to the institution of the Monarchy of *AmaZulu*; and
 - (ii) the Premier must, in the *Official Gazette* of the Province, publish a notice for general information declaring who has been so identified as the successor to the office of the Monarch.

Identification or designation of Regent

45. (1) Should the Monarch —

- (a) be younger than 21 years of age, or in the event of the death or incapacity of the Monarch; or
- (b) be absent from KwaZulu-Natal for a significant period,

the role, responsibilities and functions of the Monarch may, subject to customary law or provincial legislation referred to in section 44(1)(b), be exercised by a Regent identified or designated in terms of section 45(2).

(2) In the circumstances set out in —

- (a) subsection (1)(a), the Regent must be identified in accordance with customary law and the Royal Family must, as soon as practicable, inform the Premier of the particulars of the person so identified as Regent; or

- (b) subsection (1)(b), the Monarch must designate a Regent in consultation with his royal advisors in accordance with customary law and the Monarch must, as soon as practicable, inform the Premier of the particulars of the person so designated as Regent.
- (3) Subject to provincial legislation referred to in section 44(1)(b), the Premier must, in the *Official Gazette* of the Province, publish a notice for general information declaring who has been identified or designated as Regent in terms of section 45(2).
- (4) Before assuming office a Regent must, in a special ceremony dedicated to this purpose, swear or affirm faithfulness to the Republic of South Africa and the Province of KwaZulu-Natal and obedience to the national Constitution and this Constitution, in accordance with item 3 of Schedule 1.
- (5) (a) The Regency is exercised in terms of this Constitution and in the name of the Monarch.
(b) Subject to provincial legislation referred to in section 44(1)(b), the Regency exercised in terms of this section terminates on the day before the date —
 - (i) of publication of a notice referred to in section 44(b)(ii);
 - (ii) on which the Monarch turns 21;
 - (iii) on which the Monarch is no longer incapacitated; or
 - (iv) of the return of the Monarch to KwaZulu-Natal.
- (6) Subject to provincial legislation referred to in section 44(1)(b), a Regent receives the remuneration and benefits as may be determined by the Provincial Legislature in each case.

Role, responsibilities, powers and functions of Monarch

46. (1) The Monarch must —
- (a) uphold the national Constitution, this Constitution and the laws of KwaZulu-Natal;
 - (b) recognise the unique and diverse heritage and culture of the people of KwaZulu-Natal;
 - (c) strive to represent a symbol of unity to the people of KwaZulu-Natal; and
 - (d) promote peace, stability and nation building.
- (2) The Monarch performs those powers, responsibilities and functions as may be conferred upon, or assigned to, him or her by —
- (a) this Constitution;
 - (b) customary law;
 - (c) national legislation, including the responsibilities and functions generally or specially conferred upon, or assigned to, a king or queen by regulation made in terms of applicable national framework legislation pertaining to traditional leadership and governance; and
 - (d) provincial legislation.
- (3) The Monarch may, in addition to any traditional or ceremonial role, responsibilities or functions conferred on, or assigned to, him or her by regulation made in terms of applicable national framework legislation pertaining to traditional leadership and governance —
- (a) subject to the rules and orders of the Provincial Legislature, open or address sessions of the Provincial Legislature;
 - (b) subject to a resolution of the Provincial House of Traditional Leaders, open or address sessions of the Provincial House of Traditional Leaders;
 - (c) subject to a resolution of the Executive Council and any directive or condition imposed by the Executive Council —
 - (i) confer honours and distinctions;
 - (ii) meet foreign dignitaries; or
 - (iii) represent KwaZulu-Natal culturally and socially both within the Republic of South Africa and abroad;
 - (d) subject to a resolution of the Executive Council, open or address sessions or meetings of a provincial intergovernmental body or structure;
 - (e) subject to a resolution of a Municipal Council, open or address sessions of the Municipal Council; and
 - (f) subject to a resolution of a Local House of Traditional Leaders, open or address sessions of the Local House of Traditional Leaders.
- (4) As a symbol of unity to the people of KwaZulu-Natal the Monarch may not —
- (a) participate in party political activities; or
 - (b) express alignment with, support for, or opposition to, any political party.

Liaison with Monarch

47. The Provincial Legislature and the Executive Council may facilitate liaison and relations between the Monarch and —
- (a) the Provincial Legislature;
 - (b) the Executive Council; and
 - (c) Municipal Councils.

Civil List of Monarch

48. (1) There is a Civil List of the Monarch.
- (2) The Civil List of the Monarch —
- (a) represents an allowance paid by the Provincial Government to provide for the maintenance and expenses of the Royal Household; and
 - (b) must be approved annually in terms of an appropriation by an Act of the Provincial Legislature.
- (3) The Premier, or a member of the Executive Council designated by the Premier, is responsible as executing authority for the administration of the Civil List of the Monarch and must appoint an accounting officer in a provincial department to see to and manage the administration of the Civil List of the Monarch in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).

CHAPTER 5**PROVINCIAL ADMINISTRATION****Head office of provincial administration**

49. (1) The Premier, together with the other members of the Executive Council, may determine the head office of the provincial administration of the KwaZulu-Natal government.
- (2) For the purpose of ensuring effective and efficient service delivery the Premier, together with the responsible member of the Executive Council, may determine or direct that the head of a provincial department establishes and maintains a satellite or regional office at any appropriate location within the Province.

CHAPTER 6**GENERAL PROVISIONS****Transitional arrangements**

50. Schedule 3 applies to the transition to the new constitutional order in KwaZulu-Natal established by this Constitution, and to matters incidental to that transition.

Short title and commencement

51. (1) This Act is called the Constitution of KwaZulu-Natal, 2004, and takes effect on a date determined by the Premier by proclamation in the *Official Gazette* of the Province.
- (2) The Premier may determine different dates in respect of the taking effect of different provisions of this Constitution.
- (3) Unless the context otherwise indicates, a reference in a provision of this Constitution to a time when this Constitution becomes law must be construed as a reference to the time when the provision took effect.

SCHEDULE 1**OATHS AND SOLEMN AFFIRMATIONS**

(Sections 11, 32, 34(3), 38, 43(3) and 45(4))

Oath or solemn affirmation of members of Provincial Legislature

1. (1) Members of the Provincial Legislature, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the national Constitution, the provincial Constitution and all other law of the Republic, and I solemnly promise to perform my function as a member of the Provincial Legislature to the best of my ability.

(In the case of an oath: *So help me God.*)

- (2) Persons filling a vacancy in the Provincial Legislature may swear or affirm in terms of sub-item (1) before the presiding officer of the Provincial Legislature.

Oath or solemn affirmation of Premier, Acting Premier and members of the Executive Council

2. The Premier or Acting Premier of the Province and each Member of the Executive Council, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the national Constitution, the provincial Constitution and all other law of the Republic, and I undertake to hold my office as Premier/Acting Premier/Member of the Executive Council of KwaZulu-Natal with honour and dignity, to be a true and faithful counsellor; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the function of my office conscientiously and to the best of my ability.

(In the case of an oath: *So help me God.*)

Oath or solemn affirmation of Monarch or Regent

3. The Monarch or a Regent, before the Chief Justice or a judge designated by the Chief Justice, must swear or affirm as follows:

I, A.B., swear/solemnly affirm that I will be faithful to the Republic of South Africa and the Province of KwaZulu-Natal and will obey, respect and uphold the national Constitution, the provincial Constitution and all other law of the Republic, and I undertake and solemnly promise to hold my office as the Monarch/Regent of the Monarch of KwaZulu-Natal with honour and dignity, to rec-

recognize the unique and diverse heritage and culture of the people of KwaZulu-Natal, to strive to represent a symbol of unity to the people of KwaZulu-Natal, to promote peace, stability and nation-building; not to participate in any way in party political activities; not to divulge directly or indirectly any secret matter entrusted to me; and to perform the role and function of my office conscientiously and to the best of my ability.

(In the case of an oath: *So help me God.*)

SCHEDULE 2

ELECTION PROCEDURES

(Sections 15(2) and 31(3))

Application

1. The procedures set out in this Schedule apply whenever the Provincial Legislature meets to elect the Premier of KwaZulu-Natal or the Speaker (or Deputy Speaker) of the Provincial Legislature.

Nomination

2. The person presiding at a meeting to which this Schedule applies must call for the nomination of candidates at the meeting.

Formal requirements

3. (1) A nomination must be made on the form prescribed by the rules mentioned in item 9.
- (2) The form on which a nomination is made must be signed by two members of the Provincial Legislature, if the Premier of the Province or the Speaker (or Deputy Speaker) of the Provincial Legislature is to be elected.
- (3) A person who is nominated must indicate acceptance of the nomination by signing the nomination form or any other form of written confirmation.

Announcement of names of candidates

4. At a meeting to which this Schedule applies, the person presiding must announce the names of the persons who have been nominated as candidates, but may not permit any debate.

Single candidate

5. If only one candidate is nominated, the person presiding must declare the candidate elected.

Election procedure

6. If more than one candidate is nominated —
 - (a) a vote must be taken at the meeting by secret ballot;
 - (b) each member present at the meeting may cast one vote; and
 - (c) the person presiding must declare elected the candidate who receives a majority of the votes.

Elimination procedure

7. (1) If no candidate received a majority of the votes, the candidate who receives the lowest number of votes must be eliminated and a further vote taken on the remaining candidates in accordance with item 6. This procedure must be repeated until a candidate receives a majority of the votes.
- (2) When applying sub-item (1), if two or more candidates each have the lowest number of votes, a separate vote must be taken on those candidates, and repeated as often as may be necessary to determine which candidates are to be eliminated.

Further meetings

8. (1) If only two candidates are nominated, or if only two candidates remain after an elimination has been applied, and those two candidates receive the same number of votes, a further meeting must be held within seven days, at a time determined by the person presiding.
- (2) If a further meeting is held in terms of sub-item (1), the procedure prescribed in this Schedule must be applied at that meeting as if it were the first meeting for the election in question.

Rules

9. (1) The Chief Justice must make rules prescribing —
 - (a) the procedure for meetings to which this Schedule applies;
 - (b) the duties of any person presiding at a meeting, and of any person assisting the person presiding;
 - (c) the form on which nominations must be submitted; and
 - (d) the manner in which voting is to be conducted.
- (2) These rules must be made known in the way that the Chief Justice determines.

SCHEDULE 3

TRANSITIONAL ARRANGEMENTS

(Section 50)

Interpretation of existing legislation

1. Unless inconsistent with the context or clearly inappropriate, a reference in any legislation that existed when this Constitution

becomes law, to the Provincial Parliament, Premier, Provincial Cabinet or Provincial Minister, must be construed as a reference to the Provincial Legislature, Premier, Executive Council, or member of the Executive Council under this Constitution.

Provincial Legislature

2. (1) Anyone who is a member or office-bearer of the Provincial Legislature when this Constitution becomes law, becomes and holds office as a member or office-bearer of the Provincial Legislature in terms of this Constitution.
- (2) The Provincial Legislature as constituted in terms of sub-item (1) must be regarded as having been elected under this Constitution for a term that expires on 13 April 2009.
- (3) For the duration of its term that expires on 13 April 2009, but subject to section 12(4) of this Constitution, the Provincial Legislature consists of 80 members.
- (4) The rules and orders of the Provincial Legislature in force when this Constitution becomes law continue in force, subject to any amendment or repeal.

Oaths and affirmations

4. A person who continues in office in terms of this Schedule and who has taken the oath of office or has made a solemn affirmation under the national Constitution, is not obliged to repeat the oath of office or solemn affirmation under this Constitution.

Delegates to National Council of Provinces

5. The Provincial Legislature may, until an Act of Parliament is enacted in terms of section 65(2) of the national Constitution, provide in its rules and orders for the conferral of authority on its delegation to the National Council of Provinces to deliberate, act and cast votes on its behalf in the Council.

Executive Council

6. (1) Anyone who is the Premier when this Constitution becomes law, continues in and holds office in terms of this Constitution as the Premier.
- (2) Anyone who is a member of the Executive Council when this Constitution becomes law, continues in and holds office in terms of this Constitution as a member of the Executive Council.

Enactment of legislation required by this Constitution

7. Where this Constitution requires the enactment of legislation or rules and orders of the Provincial Legislature, that legislation and those rules and orders must be enacted or adopted, as the case may be, by the relevant authority within a reasonable time after this Constitution becomes law.

MEMORANDUM ON THE OBJECTS OF THE DRAFT CONSTITUTION OF KWAZULU-NATAL, 2004

1. Background

In his State of the Province Address delivered on 25 May 2004, the Honourable Premier of KwaZulu-Natal, stated that a draft Constitution for the Province would be finalised and submitted to the Provincial Legislature for debate and adoption in order to be ready for certification by the Constitutional Court by the end of November 2004.

The Premier's State of the Province Address promised to establish legislative recognition of the role, status and powers of His Majesty, the King, by the end of November 2004.

The Honourable Premier also expressed a commitment to increase the size of the Executive Council to ensure a more representative executive for the Province.

The draft Constitution of KwaZulu-Natal, 2004, attempts to give effect to the above undertakings by the Honourable Premier.

2. Provincial competence to adopt a provincial constitution

Section 143 of the national Constitution, 1996, deals with the contents of provincial constitutions and reads as follows:

- “143.(1) 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; or
 - (b) the institution, role, authority and status of a traditional monarch, where applicable.
- (2) Provisions included in a provincial constitution or constitutional amendment in terms of or of —
- (a) must comply with the values in and with Chapter 3; and
 - (b) may not confer on the province any power or function that falls —
 - (i) outside the area of provincial competence in terms of and ; or
 - (ii) outside the powers and functions conferred on the province by other sections of .”

It is thus clear that a provincial constitution —

- (a) may provide for the institution, role, authority and status of a traditional monarch, as long as the provisions concerned fall within the areas of provincial competence in terms of Schedules 4 and 5 of the national Constitution, 1996, and are otherwise consistent with the national Constitution, 1996; and
- (b) may provide for different executive structures, which would include an increase in the size, or a change in the composition, of a provincial executive council.

3.3. The provisions of the draft Constitution of KwaZulu-Natal, 2004, dealing with the Traditional Monarch

The draft Constitution of KwaZulu-Natal, 2004, addresses the issue of the Traditional Monarch for the Province in Chapter 4 (clauses 43 — 48).

Clause 43 provides for the status, recognition and institution of the office of Monarch for KwaZulu-Natal. The person currently holding office as the King of the Zulu nation, the King of *AmaZulu*, the *Ingonyama* or *Isilo* is regarded as the Monarch for the Province of KwaZulu-Natal. This will be the first time since 1897 that His Majesty is formally recognised by government in our Province.

The Monarch must, before assuming office, swear or affirm faithfulness to the Republic of South Africa and the Province of KwaZulu-Natal and obedience to the national Constitution and the provincial Constitution.

Clause 44 deals with succession to the office of the Monarch and provides for hereditary succession in accordance with customary law or provincial legislation.

Clause 45 makes provision for the identification or designation of a Regent should the Monarch be younger than 21 years of age or should the Monarch be absent from the Province for a significant period.

Clause 46 deals in detail with the role, responsibilities and functions of the Monarch. Provincial legislation may vest additional powers or assign further responsibilities or functions to the Monarch. As a symbol of unity to all the people of KwaZulu-Natal, the Monarch may not participate in party political activities or express alignment with, support for, or opposition to, any political party.

Liaison with the Monarch is regulated by clause 47.

Clause 48 provides for a Civil List of the Monarch which represents an allowance paid by the Provincial Government to provide for the maintenance and expenses of the Royal Household. These funds must be approved annually in terms of an appropriation by an Act of the Provincial Legislature and an accounting officer in a provincial department must manage the administration of these funds.

4. The provisions of the draft Constitution of KwaZulu-Natal, 2004, dealing with the composition of the Executive Council

The draft Constitution of KwaZulu-Natal, 2004, deals with the composition of the Provincial Executive Council in clause 35.

This clause envisages an increase in the size of the Executive Council to a maximum of twelve members appointed by the Premier from among the members of the Provincial Legislature and one additional member who is eligible to be, but is not, a member of the Provincial Legislature.

Clause 35 necessitated a consequential provision contained in clause 36(4) to provide that should the Premier appoint a member of the Executive Council who is eligible to be, but is not, a member of the Provincial Legislature, that member may attend, and may speak in, the Provincial Legislature, and is entitled to the parliamentary privilege set out in clause 20, but that member may not vote in the Provincial Legislature.

Clause 35 will give effect to desire of the Premier to establish a more representative executive for the Province.

5. The Preamble to the draft Constitution of KwaZulu-Natal, 2004

The Preamble to the draft Constitution of KwaZulu-Natal, 2004, also deserves mention.

Certain questions were been raised in relation to the reference in the Preamble, to the expression “(I)n humble submission to Almighty God” and the word “(P)ray”.

South Africa is secular State and the Bill of Rights contained in Chapter 2 of the national Constitution, 1996, guarantees freedom of religion, belief and opinion (section 15).

The Constitution of the Western Cape, 1997 (as certified by the Constitutional Court) similarly contains a Preamble with the expression: “In humble submission to Almighty God”.

This issue was specifically raised in argument and commented on by the Constitutional Court in Case CCT 6/97 (1997 (4) SA 795 CC: Certification of the Constitution of the Western Cape, 1997):

“The Preamble

[28] The preamble of the WCC commences with the phrase “in humble submission to Almighty God”. In argument the question was raised whether this was inconsistent with [the national Constitution, 1996] NC 15, which provides that:

- (1) Everyone has the right to freedom of conscience, religion, thought, belief and opinion.
- (2) Religious observances may be conducted at state or state-aided institutions, provided that —
 - (a) those observances follow rules made by the appropriate public authorities;
 - (b) they are conducted on an equitable basis; and
 - (c) attendance at them is free and voluntary.
- (3) (a) This section does not prevent legislation recognising —
 - (i) marriages concluded under any tradition, or a system of religious, personal or family law; or
 - (ii) systems of personal and family law under any tradition, or adhered to by persons professing a particular religion.
- (b) Recognition in terms of paragraph (a) must be consistent with this section and the other provisions of the Constitution.”

The invocation of a deity in these prefatory words to the preamble of the [Western Cape Constitution] WCC has no particular constitutional significance and echoes the peroration to the preamble to the NC. It is a time-honoured means of adding solemnity used in many cultures and in a variety of contexts.

Thus, in the United States with its explicit Establishment Clause separating church and state, the use of the national motto (“In God

we trust") and the reference to God in the Pledge of Allegiance to the flag have been characterised as "ceremonial deism". Such words have no operative constitutional effect nor are they fundamentally hostile to the spirit and objects of the NC. They could also not be used to interpret the provisions of NC 15 restrictively. These words could therefore have no effect on the rights of believers or non-believers. In the circumstances there is no inconsistency between the preamble of the WCC and the NC."

It is submitted that the word: "Pray" as used in the Preamble of the draft Constitution of KwaZulu-Natal, 2004, would similarly not be repugnant to the national Constitution, 1996, in the sense of requesting the blessing of the deity invoked in the Preamble.

In fact, both the national Constitution, 1996, and the national anthem of the Republic also contain the following expressions requesting the blessing of deity: "Nkosi Sikelel' iAfrika. God Bless South Africa. God Seën Suid-Afrika.", as does the Constitution of the Western Cape, 1997, and the draft Constitution of KwaZulu-Natal, 2004.

The conclusion is, therefore, that the use of the expression "(In humble submission to Almighty God)" and the word "(P)ray" in the draft Constitution of KwaZulu-Natal, 2004, would present neither a legal nor a constitutional problem.

6. The remaining provisions of the draft Constitution of KwaZulu-Natal, 2004

The rest of the provisions contained in the draft Constitution of KwaZulu-Natal, 2004, largely mirror the corresponding provisions contained in the national Constitution, 1996. These provisions are well-known and are, for the most part, self-explanatory to anyone acquainted with the national Constitution, 1996.

7. The status of the draft Constitution of KwaZulu-Natal, 2004

The draft Constitution of KwaZulu-Natal, 2004, represents a proposal by the Honourable Premier to be submitted to the Provincial Legislature for consideration and broader consultation and public participation as envisaged in the Standing Rules and Orders of the Provincial Legislature.

At that stage, the draft Constitution of KwaZulu-Natal, 2004, would become the responsibility of the Provincial Legislature and their processes would kick in: publication for comment (one month); public participation (public hearings), debate and adoption, whereupon the Speaker of the Provincial Legislature must refer the Provincial Constitution thus adopted to the Constitutional Court for certification as required by section 144(1) of the national Constitution, 1996.

It should be noted that a Provincial Constitution requires a majority of at least two-thirds in the Provincial Legislature (section 142 of the national Constitution, 1996).

The Provincial Constitution will become law after certification by the Constitutional Court and signature by the Premier and it takes effect on publication in the national *Government Gazette* (section 45(1) and (2) of the national Constitution, 1996).