ITSHATHA YAMALUNGELO AMAXHOBA
OLWAPHULO-MTHETHO ASEMZANTSI AFRIKA

the doj & cd
Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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INTSHAYELELO NGUMPHATHISWA WEZOBULUNGISA NOPHUHLISO LOMGAQO-SISEKO

Le tshatha yenkonzo zamaxhoba olwaphulo mthetho eMzantsi Afrika ("Itshata yamaxhoba") yinto ebalulekileyo yokuphuhlisa ubulungisa boluntu. Itshata yamaxhoba ivumelana nomoya woMthetho womGaqo-siseko woMzantsi Afrika ka-1996 nesiBhengezo seziZwe eziManyeneyo soMthethosiseko osisiSeko soBulungisa samaXhoba olwaPhulo-mthetho nokuSebenzisa kakubi amaGunya, 1985 (GA/RES/40/34).

Ukususela ngo 1994, kulandelwa nokukhula kwesiko

Nksk. B S Mabandla: UmPhathiswa wezoBulungisa noPhuhliso lomGaqo-siseko

lwamalungelo oluntu, ingqwalasela ithe ukusuka kwingqubo yobulungisa ejonge ukohlwaya nongquzulwano yajonga kubulungisa obakhayo. Okubalulekileyo kule ngcinga yobulungisa obakhayo kukunakana into yokuba ulwaphulo-mthetho alusosenzo esibi kurhulumente kuphela, kodwa sisenzo esibi nakumntu eso senzo senziwa kuye. Le ngcinga yokubeka ixhoba ngaphambili kwinkqubo zobulungisa zolwaphulo-mthetho zihambisana necebo lokuphelisa ubundlobongela. Injongo zoku kukuxhobisa amaxhoba ngokuthi kujongwe iimfuno zawo zomphefumlo nezempahla.

Itshata yamaxhoba nencwadi ehambisana nayo inqanaba elincinane zizixhobo ezibalulekileyo ezithetha ngokubanzi yaye zidibanisa amalungelo nokufanele ukuba kuyenziwa ngoku nxulumene nenkonzo ezijonge amaxhoba nabo babekhe bangamaxhoba olwaphulo mthetho eMzantsi Afrika. Itshata yamaxhoba ihambelana necandelo 234 lo mGaqosiseko.

Ndinethemba lokuba ngokuzimisela nenkuthalo yabo bonke abadlala indima kwinkqubo yezobulungisa, le Tshata ya-

maxhoba izakuncedisa ekusebenzeni kwemithetho ekumele yenze ukuba ubulungisa bubeyinyani kuluntu lonke.

IMBULAMBETHE

URhulumente woMzantsi Afrika jikelele namashishini omenzeli ababandakanyekayo kwinkqubo zobulungisa ngokukodwa:

Uyangqina

Ukuzibophelela kukaRhulumente ekuzalisekeni imilinganiselo ejolise ekubumbeni ngokutsha okuzingisayo kwenkqubo yobulungisa ukukhusela nokukhuthaza amalungelo amaxhoba ngokuvumelana neemfanelo zezizwe ngaphantsi kwezixhobo zamalungelo abantu ezizwe ezinjengesiBhengezo seziZwe eziManyeneyo soMthetho-siseko osisiSeko soBulungisa samaXhoba olwaPhulo mthetho nokuSetyenziswa kakubi kwamaGunya (1985),nesokunqanda nokuTshatyalaliswa kobuGebenga ngokuChasene neSongezo sabaFazi nabaNtwana kwisiBhengezo sango-1997 seSADC kwSini nakuPhuhliso;

Ukholelwa

Ukuba yenye yendima zikarhulumente ukukhuthaza ukuba onke amalungelo afumaneke ngokulinganayo kanye neenkululeko ezimelweyo kumgaqo-siseko nenkululeko eziqinisekiswe kumGaqo-siseko;yaye inkqubo yobulungisa engenamkhethe bungazuzwa kuphela ukuba amalungelo amaxhoba nawabantu abamangalelweyo ayahoywa, akhuselwe kwaye alinganiswe;

Ukuqaphela

Ingxubakalaka enengozi ethi ulwaphulo-mthetho luyenze kumaxhoba, nenokuthi lunganayo lokuphelisa amandla amalungelo oluntu lwamaxhoba;

Uthatha Ingqalelo

Yenkqubela-phambili ebalulekileyo eyenziwe ukusukela mhla kwasekwa uRhulumente wentando yabaninzi, ngokuphathelele kutshintsho lwenkqubo yobulungisa ukuqinisekisa ukufikeleleka kubulungisa nenkqubo eziniki-mpedulo kuluntu, ngokungakhathaleli ezobuhlanga, isini, inkcubeko, nesimo. Mininzi imilinganiselo efakiweyo ngelinge lotshint-

sho lobulungisa, injongo ikukubeka phambili amaxhoba, kulinganisiwe amalungelo amaxhoba kunye namalungelo abantu abangabamangalelwa yaye kuncitshiswe uphindaphindo lokuxhatsh azwa okwenzeka kumaxesha amaninzi kwezobulungisa;

Wamkela ngenxa yoko le tshatha yamaxhoba

Eza kujonga ukudityaniswa ndawonye imithetho ekhoyo eMzantsi Afrika ejongene namalungelo nempatho enikwa amaxhoba olwaphulo mthetho yaye ijonge

- Ukuphelisa uphindaphindo lokuxhatshazwa kwamaxhoba kwinkqubo zobulungisa;
- Ukuqinisekisa ukuba amaxhoba ahlala ephambili kwinkqubo zobulungisa;
- Ukucacisa amanqanaba enkonzo ezinokulindelwa yayezinikwe kumaxhoba xa edibana nenkqubo zobulungisa;
- Ukwenza amalungiselelo oncedo lwexhoba xa amanqanaba engahlangabezeki.

Amalungelo akho njengexhoba lolwaphulo-mthetho.

Ukuba uthe walixhoba lolwaphulo-mthetho, lamalungelo alandelayo, afumaneka kumGaqo siseko nakwimithetho ethile, azakukhuselwa xa unxibelelana nenkqubo yolwaphulo-mthetho kwezobulungisa.

1. Ilungelo lokuphathwa ngokufanelekileyo nangembeko ukulungiselela isidima sakho nobomi obubobakho:

- Unalo ilungelo lokuba unakekelwe ngokukhawuleza nangentobeko, uphathwe ngembeko kulungiselelwa isidima sakho nobomi obubobakho ngawo onke amalungu alo naliphi isebe likarhulumente elisebenzisana okanye elinikeza inkonzo kuwe (ukususela ngoku bazakubizwa ngokuba ngabanikezeli nkonzo).
- Amapolisa, ngexesha lophando; umtshutshisi namagosa enkundla ngexesha lolungiselelo nangexesha lwenkqubo yokuthethwa kwetyala, kwakhona njengabo bonke abanye abanikezela ngenkonzo, fanele

bathathe imilinganiselo ukunciphisa nayo nayiphina ingxaki kuwe njengexhoba ngokuqhuba udliwano-ndlebe kunye nawe ngolwimi lwakho nalapho kusithele khona ukuba kuyimfuneko.

- Le milinganiselo iza kunqanda ixhoba ekubeni layanyaniswe nokuphatha kakubi ngokukhetha okukwesibini.

2. Ilungelo lokunikezela ngolwazi

- Unelungelo lokunikezela ngolwazi ngexesha lophando lolwaphulo-mthetho nokuthethwa kwetyala.
- Amapolisa, umtshutshisi, negosa lenkonzo zoluleko baza kuthatha imilinganiselo ukuqinisekisa ukuba naluphina unikelo onqwenela ukulenza kuphando, kumangalelo lwengqawule nakuphulaphulo luvakele kwaye luthatyathwe xa bekucingwa ngokuba kuqhutyekwe nophando okanye ukumangalelwa okanye kuchotshelo lweBhodi yeNgqawule.
- Eli lungelo lithetha ukuba ungayithabatha inxaxheba (apho kuyimfuneko nalapho kulunge khona) kwinkqubo zolwaphulo-mthetho zobulungisa, ngokuya kumamela ingxoxo zebheyile, uthetho lwetyala, kwinkqubo zow-

iso-sigwebo nakwi / okanye kuchotshelo lwebhodi yengqawule.

- Le nto ithetha ukuba uza kubanalo ithuba lokwenza ingxelo engaphaya emapoliseni ukuba uyaqonda ukuba ingxelo yakho yokuqala ayigqitywanga; kwakhona ungayenza ingxelo enkundleni ukuzisa ingcaciso yokuba ulwaphulo-mthetho lukuphathe njani na.
- Ngaphezu koko, ungenza isicelo esibhaliweyo kumGcini-sihlalo weBhodi yengqawule ukuba ubekhona xa kuchotshelwa ingqawule, kwaye kufuneka ungenise izimvo zakho ezibhaliweyo

3. Ilungelo lokufumana ulwazi.

- Unelungelo lokufumana ulwazi ngamalungelo akho nokuba la malungelo uwasebenzisa njani
- Kwakhona, njengengxenye yeli lungelo, uyakwazi ukucela ingcaciso yanayiphina into ongayiqondiyo, ngolwimi lwakho.
- Unelungelo lokufumana ulwazi nokuba uxelelwe ngazo zonke inkonzo eziphatheleleneyo ezikhoyo kuwe ngabanikezeli zinkonzo.

- Fanele uxelelwe ngendima yakho etyaleni nokuba ityala lizakutsala ixesha elingakanani. Ungacela ulwazi oluphathelele nentsuku inkundla ezakuchophela ngayo ityala, imirhumo yamangqina neenkqubo zokhuseleko zamangqina.
- Ungacela ukwaziswa ngewonga letyala, ukuba umoni ubanjiwe na okanye akakabanjwa, ubekwe ityala na, unikwe ibheyile, umangalelwe, ubanjiwe, kwaye ukuba kunjalo, ugwetyiwe na.
- Ungazicela izizathu zesigqibo ezithe zathathwa malunga netyala lakho ukuba liqhubeke notshutshiso okanye hayi.
- Unelungelo lokufumana lo maxwebhu umthetho okunika ilungelo lokubana ukwazi ukufikelela kuwo.
- Ungacela ukufumana isaziso senkqubo ozakuya kuzo.
- Kwakhona ungacela umtshutshisi azise umqeshi wakho zonke iinkqubo, ezingenza ukuba kufuneke ungabikho emsebenzini.

4. Ilungelo kukhuseleko

- Unelungelo lokuba ukhululeke kungcungcuthekiso, kwimbandezelo, uloyiko, ubhucabhuco, unyobo, ukungcola nempathombi.Ukuba ulingqina fanele uxele izisongelo ezinjalo emapoliseni okanye kumtshutshisi omkhulu kaRhulumente.
- Ukuba uyavumelana neemfuno ezithile, amapolisa emva koko aza kusebenzela ukuba ubekwe ngaphantsi kokhuseleko lwengqina.
- Ukuba isicelo esinjalo siyaphumelela, uyakubekwa kwinkqubo yokhuseleko lwengqina,ekubeni uselapho uyakube ukhuselekile kangangoko kuzo zonke iindlela zempembelelo ezingafanelekanga, nakwimbandezelo okanye ekungcungcuthekisweni.
- Oku kuza kuqinisekisa ukhuseleko lwakho njengengqina ukwenzela ukuthi ubungqina bakho bufumaneke, yaye kuzakwenza ukuba ukurhoxa ekungqineni kungenzeki ngenxa yempembelelo engafanelekanga.
- Eli lungelo lithetha ukuba kwiimeko ezithile inkundla ingaluthintela upapasho lwalo naluphina ulwazi

(kubandakanywa nobuwena), okanye ingayalela ukuba ityala lixoxwe ngaphaya komkhusane (ngasese).

- Ungacela iiNkonzo zoLuleko ukuba zikuxelele ukuba umoni ubalekile okanye utshintshiwe.

5. Ilungelo kuncediso

- Unelungelo lokucela uncedo, kwaye xa kukho imfuneko unako ukufikelela kwinkonzo zezempilo nezengcebiso kwakunye noncedo lwasemthethweni oluphendulayo kwiimfuno zakho.
- Amapolisa aza kukuncedisa ngokukucacisela iinkqubo zamapolisa; ngokukuxelela amalungelo akho nokwenza isingqinisiso esifanelekileyo kwabanye abanikezeli nkonzo.
- Umlawuli we-ofisi okanye intloko yeofisi enkundleni iza kwenza amalungiselelo ukulungiselela iinkonzo zetoliki.
- Umtshutshisi uza kuqinisekisa ukuba imilinganiselo eyodwa iyasetyenziswa ngokunxulumene netyala lesini, ubugebenga basekhaya nenkxaso yomntwana/isondlo,

ukuthi lomatyala achotshelwa kwiinkundla ezizodwa apho zikhona.

- Ukuba unemfuno ezizodwa, bonke abanikezeli nkonzo ngokunxulumene nemisebenzi yabo elandelelanayo banoxanduva lokuthatha onke amanqanaba ukwamkela amaxhoba anemfuno ezizodwa bawaphathe ngobunono.

6. Ilungelo kwimbuyekezo

- Unelungelo kwimbuyekezo yelahleko okanye umonakalo wempahla ezonakele ngenxa yolwaphulo-mthetho olwenziwe ngokuchaseneyo nawe.
- Ungathi ngalo mhla wokugwetywa kommangalelwa ucele umtshutshisi ukuba enze isicelo enkundleni somyalelo wembuyekezo ngokwecandelo 297 no-300 woMthetho weNkqubo yolwaPhulo-mthetho inombolo 51 ka-1977.
- "Imbuyekezo" ibhekiselele kumyinge wemali inkundla ejonge ezobundlobongela ithi iyinike ixhoba elithe lalahlekelwa okanye lonakalelwa yimpahla, kubandakan-

ya imali, ngenxa yesenzo solwaphulo-mthetho okanye ukungalandeli komthetho komntu obanjiweyo ngokwenza ulwaphulo-mthetho.

- Umtshutshi uza kukuxelela ukuba umyalelo wembuyekezo uvunyiwe yinkundla, akucacisele ukuba uthini umyalelo yaye ungawusebenzisa njani. Apho inkundla yolwaphulo-mthetho inganiki myalelo wembuyekezo kummangalelwa uyakwazi ukufaka ityala kwinkundla enjongene namatyala ezemali. Lento yenzeka apho umonakalo kungekho lula ukuwulinganisela ngokwezemali njenga kwityala lo monakalo wengqondo okanye intlungu nobuhlungu.

7. Ilungelo kwisibuyiselo

Unelungelo kwisibuyiselo ngokuphathelele kwimpahla oyithathelwe ngokungekho mthethweni. "imbuyekezo" ibhekiselele apho inkundla, emva kokufumanisa umangalelwa enetyala, iyalela umoni abuyisele iimpahla afunyenwe enetyala lokuba nazo ngokungekho mthethweni azithathe kuwe ukwenzela ukugcina wena usendaweni obukuyo ngaphambi kwetyala.

- Umtshutshisi uza kukuxelela ukuba imbuyekezo iquka ntoni kwaye unobhala wenkundla uza kukunceda ekunyanzeliseni eli lungelo.

IZIKHALAZO

Gcina engqondweni ukuba unelungelo lokukhalaza, unganxibelelana neSebe likaRhulumente elithile okanye umnikezeli ngenkonzo ukuba ngaba unesikhalazo ngokuphathelelene nenkonzo oyifumanayo okanye ukuba ngaba amalungelo akho awasiwanga so. Ukuba awonelisekanga yindlela apho izikhalazo zakho ziphathwe ngayo, usenakho ukunxibelelana nemibutho enjengale :

a. I-ofisi yomkhuseli woluntu,
b. Ikhomishoni yamaLungelo oluNtu yaseMzantsi Afrika
c. Ikhomishoni yolingano ngokwesini,
d. candelo lezikhalazo elizimeleyo,
e. Ii-ofisi zamapolisa enqila;
f. Ikhansile yemisebenzi yezempilo yoMzantsi Afrika, okanye
g. Igqwetha ozikhethele lona ngokwakho ngemali yakho

Iinkcukacha ngolwazi olungaphaya ngokudibanise ne tshata yamaxhoba nceda bhekisa kumaNqanaba amaNcinane kwiNkonzo zamaXhoba olwaPhulo-mthetho. Olu xwebhu luyafumaneka kuyo nayiphina i-ofisi kaRhulumente.

Abo banendima abayidlalayo kwezobulungisa bazak-wenza inzame zokuba le tshata yamalungelo ifumaneke kwezi-ofisi

- Ezinkundleni
- Kwi-ofisi zesebe zeNkonzo Zoluleko
- Kwi-ofisi legunya lesizwe labatshutshisi
- Ezintolongweni
- Kwi-ofisi zamapolisa nezabaphandi
- Ofisi zenkonzo zoluntu
- Ofisi zamapolisa enqila
- Kwindawo ezijonge ezempilo zoluntu

ULWAZI OLUNGAPHEZULU

Ukuba ufuna ulwazi olungaphezulu oluphathelele kuwo nawuphina umcimbi oqulathwe kolu xwebhu, unganxibelelana neSebe lezoBulungisa noPhuhliso lomGaqosiseko leCandelo leSini kwezinombolo zilandelayo:

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IMIBULELO

Itshatha yenkonzo yamaXhoba olwaphulo-mthetho aseMzantsi Afrika yaphuhliswa liCandelo leSini kwiSebe lezoBulungisa noPhuhliso lomGaqo-siseko, ngentsebenziswano neSebe loPhuhliso lwezeNtlalontle, iiNkonzo yezoLuleko, iMfundo, nezeMpilo, kwakunye noGunyaziwe woTshutshiso weSizwe, iiNkonzo zamaPolisa oMzantsi Afrika, iKhomishoni yotHaziyo mthetho wokuLungisa yaseMzantsi Afrika, iKhomishoni yamaLungelo oluNtu yaseMzantsi Afrika, i-Ofisi yomKhuseli woluNtu, iCandelo leziKhalazo eliziMeleyo, iiKhomishini zamalungu eeNkonzo zooMantyi nenkundla kwakunye namalungu amaPolisa enqila yeTshwane.

Isebe lobuLungisa noPhuhliso lomGaqo-siseko libulela kakhulu ngeminikelo exabisekileyo eyenziwe yimibutho engekho phantsi koRhulumente eyahlukahlukeneyo namaziko emfundo ephakamileyo kumaxwebhu.

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