IMEMORANDAMU MAQONDANA NOMTHETHOSIVIVINYWA WOKUCHITSHIYELWA KOMTHETHO WOKUPHATHWA KWEMISEBENZI KAHULUMENI

1. ISENDLALELO

1.1 Ukuze kuqaliswe ukusebenza kombono wophiko olulodwa lokuphathwa komsebenzi kahulumeni, kwasungulwa uMthethosivivinywa Wokuphathwa Kwemisebenzi Kahulumeni ngowezi-2008 ukuze uhlinzekele ukuhlela, ukuphatha, ukusebenza kanye nezindaba eziphathelene nabasebenzi ezinhlakeni zontathu zikahulumeni.

1.2 UMthethosivivinywa Wokuphathwa Kwemisebenzi Kahulumeni wadlulela phambili ezinhlelweni zephalamende kusukela kowezi-2008 kuya kowezi-2014 waze wagcina usumenyezelwe njengoMthetho Wokuphathwa Kwemisebenzi Kahulumeni, wezi-2014 (uMthetho onguNombolo 11 wezi-2014) ("uMthethongqangi"), futhi wasayinwa nguMongameli ngowezi-2014 ukuze ube ngumthetho.

1.3 Inhloso yokuba nomthetho owodwa olawula ukuphathwa kwemisebenzi kahulumeni ayizange ifezeke njengoba uMthethongqangi ungazange uwuchithe uMthetho Wemisebenzi Kahulumeni, we-1994, futhi awuzange uchithe uMthetho Wezinhlelo Zomasipala, wezi-2000, njengoba kwakuhlongoziwe ekuqaleni.

1.4 Njengamanje, yizigaba eziyishumi nantathu kuphela zoMthethongqangi ezaqala ukusebenza, kusukela mhla lu-1 kuMbasa wezi-2019, ngenkathi izigaba eziyisikhombisa ezisele (izigaba 5, 6, 7, 9, 11, 12 no 19) zisalokhu zingasebenzi njengoba zidinga imithethonqubo ethile ukuze ziqale ukusetshenziswa, noma kunzima ukuzisebenzisa noma zidinga ukuchitshiyelwa.

1.5 Selokhu kwamenyezelwa uMthethongqangi, kube yinselele ukuqinisekisa ukuqaliswa kwawo ngokugcwele njengoba uMthetho wabangela ukunqwabelana kwezindawo ezilawulwa yinqubomgomo kanye nezibopho esezivele zihlinzekelwe kweminye imithetho ngaphandle kokuhlinzekela ukuchithwa noma enye indlela yokubhekana nalokhu kunqwabelana. Ezinye zezimiselo zoMthethongqangi azikwazi ukusebenziseka ngenxa yezimali kanye nezinye izinto okumele zicatshangelwe. Ukuqaliswa kokusetshenziswa kwezimiselo eziningi zoMthethongqangi kuncike kwimithethonqubo engagunyazwa kuphela ngaphansi kwezimo ezinzima ezidinga ukuvumelana noNgqongqoshe Bezemisebenzi Kahulumeni Nokuphathwa Kwayo, Wezezimali, Ukubusa Ngokubambisana Nezindaba Zomdabu kanye Nohulumeni Wasekhaya waseNingizimu Afrika.

1.6 Ukwengeza kulokhu okushiwo ngenhla, kwethulwa izimiselo ezintsha ukuze kususwe futhi kuqedwe ukungalingani okungafanele okukhona emaholweni kanye nasezimweni zokusebenza emkhakheni kahulumeni, kubandakanya nezinkampani zikahulumeni kanye nokuhlinzekela

izinqubo zokugunyaza ezididiyelwe zokunqunywa kwamaholo kanye nezimo zokusebenza.

2. UKUHLAZIYWA KOMSHWANA NOMSHWANA WOMTHETHOSIVIVINYWA

2.1 Izinjongo zoMthethosivivinywa

Izinjongo ezisemqoka zalo Mthethosivivinywa ukwenza ngcono ukuhlinzekwa kwezidingongqangi ngokuhanjelaniswa kwezindaba zabasebenzi, ukubusa kanye nezinhlelo ezihlobene nalokho ezinhlakeni ezintathu zikahulumeni; ukuhlinzekela ukwedluliswa kanye nokubolekiswa kwabasebenzi, ukuhlinzeka ngencazelo mayelana nokwenqatshelwa kwabasebenzi ukwenza ibhizinisi nohlaka oluthile lukahulumeni; ukuhlinzekela umthethosisekelo weSikole Sikazwelonke Sikahulumeni njengomnyango kazwelonke, ukususa ukungalingani okungenabulungiswa kuzo zonke izikhungo zoMbuso kanye nokuhlinzekela ukudidiyela izinqubo zokunikeza amagunya ezingxoxweni zamaholo abasebenzi bemisebenzi kahulumeni.

2.2 Umshwana 1

Umshwana 1 uhlinzekela ukufakwa kwezincazelo ezintsha esigabeni 1 soMthethongqangi ukuze kuhlinzekelwe ukuhunyushwa kalula. Izincazelo ezinjengokuthi, "inhloko yesikhungo", "uMthetho Wezobudlelwano Babasebenzi", "uMthetho Wezinhlelo Zomasipala", "ingxenye kahulumeni kazwelonke", "uhlaka lukahulumeni", "izinhlangano ezimele ohulumeni basekhaya", "umnyango wesifundazwe", "ingxenye kahulumeni wesifundazwe", "ukuphathwa komsebenzi kahulumeni", "inkampani kahulumeni", "umsebenzi kahulumeni" sekubhekaniwe nazo.

2.3 Umshwana 2

Umshwana 2 uhlose ukuchibiyela isigaba 5 soMthethongqangi ukuze uphinde uhlinzekele ukudluliswa kwabasebenzi phakathi kwemisebenzi kahulumeni nomasipala naphakathi komasipala bebodwa. Ukudluliselwa phambili kwabasebenzi kuqinisekisa ukuhamba kwabasebenzi phakathi kwazo zonke izinhlaka zikaHulumeni lapho kukhona ukushoda kwabasebenzi khona noma lapho izidingo zokusebenza zidingeka khona. Lokhu kuzothuthukisa ukubusa okuhle futhi kuvumele ukudluliswa kwamakhono nezinsizakusebenza lapho kudingeka khona.

2.4 Umshwana 3

Umshwana 3 uhlinzekela ukuthi ukubolekiswa kwabasebenzi noma kwezimali okuhlongozwe esigabeni 6 soMthethongqangi kufanele kwenzeke kuphela lapho kunesizathu sokwenziwa komsebenzi. Lokhu kuqinisekisa ukuthi ukubolekiswa kwabasebenzi noma kwezimali akuholeli ekudaleni amaphutha nokushoda okuthikameza ukuhlinzekwa kwezidingongqangi ezikhungweni zikahulumeni.

2.5 Umshwana 4

Umshwana 4 uhlongoza ukuchithwa kwesigaba 7 soMthethongqangi njengoba ukudluliswa kwabasebenzi abathikanyezwe ukudluliswa kwemisebenzi kuzo zonke izikhungo kulawulwa ngokwanele ngokoMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, we-1996, uMthetho Wemisebenzi Kahulumeni, we-1994 kanye noMthetho Wohulumeni Basekhaya: uMthetho Wezinhlelo Zomasipala, wezi-2000. Phezu kwalokho, ukubhekisela kwisigaba 197 soMthetho Wezobudlelwane Babasebenzi, we-1995, esigabeni 7 akusebenzi ekudlulisweni noma ekujutshweni komthetho.

2.6 Umshwana 5

Umshwana 5 uhlose ukuchibiyela isigaba 8 soMthethongqangi uku—

(a) cacisa izincazelo zamagama noma izinkulumo ukuze kuqinisekiswe ukuhunyushwa kalula kwezimiselo zesigaba 8 njengokubhekisela 'kuhlaka lombuso' esikhundleni soMbuso kanye nencazelo yomqondisi wenkampani.

(b) ngabandakanyi abasebenzi abaqokwe ngenxa yezikhundla zabo emabhodini endaweni yokwenqatshelwa ngokwesigaba 8; kanye

(c) nokunika uNgqongqoshe amandla okunquma ukuthi ukuthengiselana okuthile phakathi kohlaka lombuso kanye nomsebenzi akuhunyushwa “njengokuqhuba ibhizinisi nohlaka lombuso” ukususa imiphumela ebingahlosiwe ekusetshenzisweni koMthetho.

2.7 Umshwana 6

Ukuchitshiyelwa okwenziwa kumshwana 6 kuhloswe ngakho ukubhekana nemikhawulo yangemuva kokuqashwa komsebenzi. Kwenziwe isimiselo sokuthi kubekwe isikhathi 'sokupholisa amaseko' esiyizinyanga eziyi-12 kubasebenzi abathintekayo ekuthengeni izinsizakalo zabahlinzeki bezinsizakalo. Kuhlinzekela ukwenqatshelwa kokwamukela ukuqashwa noma ukuqokelwa ebhodini lomhlinzeki wezinsizakalo, ukwenziwa komsebenzi okhokhelwayo noma ukwamukela noma iyiphi enye inkokhelo noma umvuzo. Abahlinzeki bezinsizakalo noma abasebenzi abephula lesi simiselo banecala futhi uma belahlwa yicala bayohlawuliswa imali eyisigidi samaRandi.

2.8 Umshwana 7

Ukuchitshiyelwa okwenziwa kumshwana 7 kuhloswe ngakho ukucacisa izimiselo zamanje maqondana nencazelo yegama elithi "isisebenzi" ngezinhloso zokudalulwa kwezintshisekelo/izinzuzo zezezimali ezihlongozwe kwisigaba 9 soMthethongqangi.

2.9 Umshwana 8

Umshwana 8 uhlose ukuchibiyela isigaba 10(2)(a) soMthethongqangi ukuze sihlinzekele ukuthi iminyango kufanele, ngokwesabelomali sayo esikhona, ihlinzekele uqeqesho oluyimpoqo oluyalelwa uNgqongqoshe ukubhekana nezidingo zentuthuko yezigaba zabasebenzi.

2.10 Umshwana 9

Umshwana 9 uhlose ukuchibiyela isigaba 11 soMthethongqangi ukuze kusungulwe iSikole Sikazwelonke Sikahulumeni njengomnyango kazwelonke ukuze sihlinzeke ngemfundo nokuqeqeshwa kubasebenzi kuzo zonke izinhlaka zikahulumeni, okuhlanganisa omasipala nezinkampani zikahulumeni.

2.11 Umshwana 10

Umshwana 10 uhlose ukuchitha isigaba 12 soMthethongqangi njengoba sesingasasebenzi kulandela ukuchitshiyelwa okuhlongozwayo kwesigaba 11 soMthethongqangi.

2.12 Umshwana 11

Umshwana 11 uhlose ukuchibiyela isigaba 13 soMthethongqangi ukuze kususwe umthwalo ongenasidingo othweswe iKhabhinethi maqondana nokunqunywa kwezidingonqala kanye/noma imfundo nokuqeqeshwa okuyimpoqo.

2.13 Umshwana 12

Umshwana 12 uhlinzekela ukususwa kwesigaba 16(2) soMthethongqangi. Ngakho-ke inqubo yokukhishwa kwezinkambiso nemibandela maqondana nokukhuthazwa kobugugu nemigomo evezwe esigabeni 195 soMthethosisekelo izoba ngokwezinqubo ezivezwe esigabeni 18 soMthethongqangi.

2.14 Umshwana 13

Umshwana 13 uhlose ukuchibiyela isigaba 17(7) soMthethongqangi ukuze kususwe isibhekiselo esibhekiswe emagameni athi "*kanye namalungu aso*". Isigaba 17(7) soMthethongqangi sidinga ukuthi uNgqongqoshe obhekele Imisebenzi Kahulumeni kanye Nokuphathwa Kwayo anqume amandla eHhovisi namalungu alo. UMthethongqangi awuhlinzekeli imisebenzi yelungu ngalinye ngakho-ke kuhlongozwa ukuthi akudingekile noma akunasidingo sokuthi kunqunywe amandla amalungu.

2.15. Umshwana 14

Umshwana 14 uhlinzekela ukufakwa kwezigaba 17A no-17B kuMthethongqangi. Isigaba 17A sihlinzekela inqubo yokususa ukungalingani okungenabulungiswa maqondana nabasebenzi abangaweli ngaphansi komkhandlu wezingxoxo zamaholo ofanele. Maqondana nalokhu uMthethosivivinywa uhlinzekela ukuba uNgqongqoshe, ngemuva kokubonisana noNgqongqoshe ofanele, futhi kuncike ekucutshungulweni kwemithethonqubo, ukuba anqume—

(a) imikhawulo ephezulu yamaholo kanye nezimo zokusebenza zezigaba ezithile zabasebenzi ezingangeni ngaphansi komkhandlu wezingxoxo zamaholo ofanele; kanye

(b) nezinyathelo zokususa ukungalingani okungenabulungiswa phakathi kwabasebenzi bemisebenzi kuhulumeni inqobo nje uma lezo zinyathelo kungafanele zehlise iholo lanoma yibaphi abasebenzi.

Isigaba 17B sihlinzekela ukudidiyelwa kwezinhlelo zokunikeza amagunya kanye nokubonisana zezingxoxo zamaholo abasebenzi abenza imisebenzi kahulumeni, kubandakanya nezinkampani zikahulumeni nomasipala, ngokwehlukana. Isichibiyelo sisungula iKomidi loNgqongqoshe okufanele, ekunqumeni igunya, licabangele amandla okukwazi ukukhokha kanye nanoma iyiphi enye into ebekwe uNgqongqoshe ngokubonisana noNgqongqoshe Wezezimali.

Lezi zimiselo zihlose ukusungula ukudidiyelwa kanye nokuxhumana okungcono phakathi kwezikhungo ezehlukene ukuze kususwe ukungalingani okungenabulungiswa ngaphandle kokucekela phansi izinhlaka kanye nezinqubo ezikhona zokuxoxisana ngezindaba zamaholo ngokuhlanganyela noma ukubukela phansi imithetho elawula abasebenzi ezikhungweni ezehlukene.

UMthethosivivinywa uyalihlonipha iqhaza loNdunankulu, amaPhini oNgqongqoshe kanye nezinhlangano ezimele ohulumeni basekhaya futhi usungula isigcawu/inkundla yokuxhumana phakathi kwezinhlaka zikahulumeni ukuqinisekisa ukuthi lezo zinhlaka lezo kuyaxoxiswana nazo kulezi zinhlelo.

2.16. Umshwana 15

Umshwana 15 uhlose ukuchibiyela isigaba 18(2) soMthethongqangi ukuze sihambelane noMthetho Wohulumeni Basekhaya: uMthetho Wezinhlelo Zomasipala, wezi-2000, mayelana nokukhishwa kwemithethonqubo ephathelene nohulumeni wasekhaya ngemuva kokubonisana nezinhlangano ezimele ohulumeni basekhaya. Phezu kwalokho, kuhlongozwa esinye isichibiyelo ukuze kuvunyelwe ukwenziwa kwanoma imuphi umthethonqubo othinta izinkampani zikahulumeni ukuthi usungulwe ngemuva kokubonisana noNgqongqoshe obhekele izinkampani zikahulumeni.

3. IMINYANGO/IZINHLANGANO/ABANTU OKUBONISWANE NABO

Iminyango kazwelonke neyezifundazwe, uhulumeni wasekhaya, izinyunyana ezimele abasebenzi, i-NEDLAC, izinhlangano ezimele ohulumeni basekhaya kanye nomphakathi wonkana.

4. IMITHELELA YEZIMALI EQONDENE NOMBUSO

UMthethosivivinywa awuzoba nayo imithelela yezezimali ezikhungweni zemisebenzi kahulumeni.

5. INQUBO YASEPHALAMENDE

5.1 Abeluleki Bezomthetho Bombuso kanye noMnyango banombono wokuthi uMthethosivivinywa kumele ucutshungulwe ngokulandela inqubo eshiwo

kwisigaba 76 soMthethosisekelo njengoba kuwumthetho osohlwini lwesigaba 76(3) soMthethosisekelo, okungukuthi umthetho ohlongozwe esigabeni 195(3) no-197 soMthethosisekelo.

5.2 Abeluleki Bezomthetho Bombuso banombono wokuthi kungenzeka sibe khona isidingo sokuthi lo Mthethosivivinywa udluliselwe eNdlini Kazwelonke Yabaholi Bendabuko kanye nabaholi bama-Khoi-San ngokwesigaba 39(1*)(a)(*ii) soMthetho Wezobuholi Bendabuko Nobama-Khoi-San, wonyaka wezi-2019 (uMthetho ongunombolo 3 wonyaka wezi-2019), njengoba uMthethosivivinywa uqukethe izindaba okukhulunywe ngazo esigabeni 154(2) soMthethosisekelo.

Printed by Creda Communications

ISBN 978-1-4850-0933-7