

IMEMORANDAMU MAQONDANA NEZINJONGO ZOMTHETHOSIVIVINYWA YOKUCHIBIYELA UMTHETHO WEZAMAZINGA-SIMO EMIKHIQIZO YEZOLIMO

1. INHLOSO NESENDLALELO

1.1. UMthethosivivinywa Wokuchibiyela uMthetho Wezamazinga-simo Emikhiqizo Yezolimo uhlose ukuchibiyela uMthetho Wezamazinga-simo Emikhiqizo Yezolimo wonyaka we-1990 (uMthetho ongunombolo 119 we-1990) (emuva kwalokhu ozobizwa “ngoMthetho”). UMthetho uhlinzekela ukulawulwa kokuthengiswa nokuthunyelwa emazweni angaphandle kwemikhiqizo ethile yezolimo, ukulawulwa kwemikhiqizo ethile yezolimo evela emazweni angaphandle engena kuleli, ukulawulwa kweminye imikhiqizo ehlobene naleyo, kanye nezindaba ezixhumene nalokho.

1.2. Kuhlonzwe ubuthakathaka obuhlukahlukene obukhona kulo Mthetho okwenze ukuthi kudingeke izichibiyelo. Ubuthakathaka obukhulu bebusencazelweni yohlelo lokulawula ukuphatha, ebifaka phakathi zonke izinhlelo zokuphatha eziphatelene nezinkambiso zokuhlola, ukucutshungulwa kwezinganhle/ikhwalithi kanye nokukhiqiza, futhi okwatholakala ukuthi ayibekwanga ngendlela efanele ukuze kufezekiswe ngokuphelele lokho obekuhlosiwe. Lokhu kwavezwa nguMeluleki Wezomthetho Wombuso ngenkathi kwenziwa imithethonqubo okwatholakala ukuthi yeqile futhi yadlulela ngale kwegunya lokusebenza koMthetho, phecelezi, *ultra vires*.

1.3. Inhlosongqangi yoMthethosivivinywa wukwenza lokhu—.

(a) ukuhlinzekela ukusetshenziswa ngendlela ecacile futhi esebenza kahle kohlelo lokulawula ukuphatha;

(b) ukuhlinzekela ukucutshungulwa komkhiqizo ngenhloso yokulawulwa kwezinganhle/ikhwalithi; kanye

(c) nokuhlinzekela futhi nezinye izindaba ezizonqunywa.

2. ISIFINGQO SEMININGWANE YOMTHETHOSIVIVINYWA

2.2. Umushwana 1: Ukuchitshiyelwa kwesigaba 1

Lo mushwana uchibiyela izincazelo ezithile, okuyilezi ezilandelayo “umcwaningi-mabhuku”, “uMqondisi-Jikelele”, “uhlelo lokulawula ukuphatha”, “uNgqongqoshe”

kanye negama elithi “thengisa” futhi ufaka incazelo entsha yegama elithi “ucwaningo-mabhuku”.

2.3. Umushwana 2: Ukuchitshiyelwa kwesigaba 2

Lo mushwana ubalula ukuthi uNgqongqoshe angaqoka inkampani, umgwamanda, isikhungo, inhlango noma ibhodi elinolwazi oluthile, njengomqokwa onikezwe amagunya namalungelo okuhlola impahla ngenhloso yokulawulwa kwezinganhle/ikhwalthi kanye nokucwaningwa kwamabhuku maqondana nohlelo lokulawula ukuphatha, inqobo nje uma umqokwa lowo engenayo intshisekelo ngqo noma-ke ngezinye izindlela ezihlobene nalokho ezohlomulisa yena siqu sakhe noma imhlomulise ngakwezezimali.

2.4. Umushwana 3: Ukuchitshiyelwa kwesigaba 3

Lo mushwana uchibiyela isigaba 3 ukuze kuhlinzekelwe inqubokusebenza maqondana nokunqunywa kwemali ngumqokwa.

2.5. Umushwana 4: Ukuchitshiyelwa kwesigaba 3A

Lo mushwana uhlinzekela ukufakwa kwegama elithi “ucwaningo-mabhuku”.

2.6. Umushwana 5: Ukuchitshiyelwa kwesigaba 15

Lo mushwana ufaka esigabeni 15 amagama athi “uhlelo lokulawula ukuphatha” (isigatshana (1)(dA)) kanye negama elithi “ucwaningo-mabhuku” (isigatshana (1)(g)), njengezindaba uNgqongqoshe angenza imithethonqubo maqondana nazo.

3. IZINHLANGANO OKUBONISWANE NAZO

3.1. Ababambiqhaza okuboniswane nabo kuze kube manje ngababambiqhaza bangaphakathi (uPhiko Lwezokuphepha Kokudla Nokuqinisekiswa Kwezinganhle/ikhwalthi kanye noPhiko Lwezinsizakalo Zokuhlola). Abaqokwa: yibhodi elilawula ukuthunyelwa kwemikhiqizo ebolayo emazweni angaphandle, phecelezi, *iPerishable Product Exports Control Board* (PPECB), inhlango elawula imikhiqizo yezolimo, phecelezi, *iProduct Control for Agriculture* (PROKON) kanye nenkampani yemboni yenyama yakuleli, phecelezi, *iSouth African Meat Industry Company* (SAMIC).

3.2. Kwaboniswa nababambiqhaza abalandelayo maqondana noMthethosivivinywa, futhi owashicilelwa ukuze umphakathi uphawule ngawo:

- Iminyango kazwelonke ehlukehlukehene, izimpiko zohulumeni bezifundazwe nabezindawo;
- Izinhlango ezihlukehlukehene ezisebenza ngemikhiqizo yezolimo ezinjengeHortgro, CGA, GrainSA, Imboni Yemibhoshongo Yokugcina Imikhiqizo Yezolimo Esanhlamvu;
- Abameleli bezinhlango ezinjenge-AgriSA kanye neNAFU;
- Izitolo ezidayisa impahla kanye nabathengisimpahla ngobuningi (*wholesalers*);
- Amabhizinisi athumela impahla emazweni angaphandle, izinkampani ezithutha impahla, izinqolobane kanye nezinkampani ezisebenza ngaphansi kwazo;
- Abathengisi kanye nalabo abathenga impahla emazweni angaphandle engena kuleli;
- Izinhlango Zabathengi; kanye
- Nezakhamizi ezijwayelekile ezinentshisekelo nezimfuno ezithile kulo mkhakha.

4. IMITHELELA EQONDENE NEMINYANGO KAHULUMENI KAZWELONKE KANYE NEZIKHUNGO ZOMPHAKATHI

4.1. Mincane kakhulu imithelela ezoba khona maqondana nezidingo eziqondene nabasebenzi, izimali kanye nengqalasizinda. Isichibiyelo “sohlelo lokulawula ukuphatha” kungenzeka sibe nemithelela ehlobene nokuqashwa kwabasebenzi ezikhungweni zikahululemi ngokunjalo futhi nasekuqokweni kwabaqokwa abanikezwe amalungelo.

4.2. Abathumeli-mpahla emazweni angaphandle, abalimi kanye nabathengisi-mpahla bangahlomula eziqinisekiseni ezingatholakala ekusebenziseni amagama okuheha abathengi anjengegama elithi *organic* (okusho umkhiqizo wezolimo okhizwe ngaphandle kokusebenzisa izikhuthazi zamakhemikhali, izibulalizinambuzane zamakhemikhali kanye nezinye izinhlobo zamakhemikhali) namagama athi *free range*

(asho imfunyo engavalelwe kodwa ededelwayo izulazule ngokukhululeka), phakathi kwamanye amaningi, okungenzeka aqinisekise ngokusemthethweni. Abathengi bazohlomula futhi ekuvikelweni ezintweni ezidukisayo nezikhohlisayo ezishiwo ngabantu abafuna ukukhuthaza ukuthengwa kwemikhiqizo yabo futhi ngalokho-ke bakwazi ukuthenga impahla esezingeni elifanelekile futhi ngentengo ekahle. Ikhwalithi yemikhiqizo ethengiswayo nayo izokwenziwa ngcono. INingizimu Afrika kungenzeka ibe nohlelo lokulawula ukudla oluqinisiwe ngenxa yezinguquko ezihlongozwayo ezilindelekile ezizoba yisisekelo esihle ekukhuthazeni ukuhwebelana kanye nokufinyelela ezimakethe.

5. IMITHELELA EQONDENE NOMNYANGO

Muncane kakhulu umthelela ozoba khona phezu koMnyango ngaphandle nje kwezinguquko ezincane okumele zenziwe esimweni sokwakheka koPhiko Lwezokuphepha Kokudla Nokuqinisekiswa Kwekhwalithi kanye noPhiko Lwezinsizakalo Zokuhlola.

6. IMITHELELA EQONDENE NOHULUMENI WESIFUNDAZWE

Ayikho.

7. INQUBO YASEPHALAMENDE

7.1. Abeluleki Bezomthetho Bombuso kanye noMnyango Wezolimo, Izinguquko Kwezomhlaba kanye Nokuthuthukiswa Kwezindawo Zasemakhaya banombono wokuthi lo Mthethosivinywa kumele ucutshungulwe ngokulandela inqubokusebenza eyasungulwa yesigaba sama-76 soMthethosisekelo ngenxa yalezi zizathu ezilandelayo:

ISahluko 4 soMthethosisekelo siyibeka ngokucacile indlela okumele ilandelwe yiPhalamende lapho lishaya imithetho. Lesi sahluko sibeka izinqubokusebenza ezihlukahlukene okumele zisetshenziswe maqondana neMithethosivinywa, kubandakanya neMithethosivinywa ejwayelekile engazithinti izifundazwe (inqubokusebenza yesigaba sama-75), kanye neMithethosivinywa ejwayelekile ethinta izifundazwe (inqubokusebenza yesigaba sama-76). Ukuthathwa kwesinqumo mayelana nokuthi iyiphi inqubokusebenza ezolandelwa ngenkathi kucutshungulwa

uMthethosivivinywa ibizwa ngetagging (ukuhlukaniswa ngendlela efanele koMthethosivivinywa).

Ngokwesigaba sama-76(3) soMthethosisekelo, uMthethosivivinywa kumele ucutshungulwe ngokulandela isigaba sama-76 uma ungena ngaphansi komkhakha wokushaywa kwemithetho osohlwini olukuSheduli 4. USheduli 4 woMthethosisekelo ubonisa uhlu lwemikhakha yokushaywa kwemithetho engaphansi kwamagunya okushaya imithetho kahulumeni kazwelonke nohulumeni bezifundazwe besebenza ngokuhlanganyela futhi ngokuvumelana. Odabeni lokuthi ingabe uMthethosivivinywa Wezotshwala uyahambisana yini noMthethosisekelo, inkantolo yabalula lokhu okulandelayo:

“...Kumele kukhumbuleke ukuthi isigaba sama-76 sinesihloko esithi ‘iMithethosivivinywa ejwayelekile ethinta izifundazwe’. Lokhu ngokubona kwami, kuyinkomba eqinile ebhalwe phansi ukuthi isigaba sama-76(3) kumele siqondakale njengesiyalela ukuthi noma yimuphi uMthethosivivinywa onezimiselo eziwela ikakhulukazi ngaphansi komkhakha wokushaywa komthetho osohlwini olukuSheduli 4 kumele ucutshungulwe ngaphansi kwesigaba sama-76.

Lapho uMthethosivivinywa ungena ngaphansi komkhakha wokushaywa komthetho osohlwini olukuSheduli 4, akumele ucutshungulwe ngokwesigaba sama-75, kodwa kumele ucutshungulwe ngokwenqubokusebenza yesigaba sama-76(1) noma yesigaba sama-76(2)”.

Kulandela esinqumweni sangaphambilini maqondana noMthethosivivinywa Wezotshwala, iNkantolo ecaleni lika *Tongoane kanye Nabanye lapho babemangalele khona uNgqongqoshe Wezolimo Nezindaba Zomhlaba kanye Nabanye**, yakuqinisekisa ukuthi ‘uMthethosivivinywa onezimiselo eziwela ikakhulukazi ngaphansi komkhakha wokushaywa komthetho osohlwini olukuSheduli 4 kumele ucutshungulwe ngaphansi kwesigaba sama-76’. Lesi sivivinyo sokuhlukaniswa koMthethosivivinywa ‘sigxile kuzo zonke izimiselo zoMthethosivivinywa ukuze kutholakale ukuthi ziyithinta kakhulu kangakanani imikhakha yokushaywa komthetho osohlwini olukuSheduli 4, futhi kumele kungabhekwa ukuthi ngabe kukhona nanoma yisiphi isimiselo kulezi esihlobene nomongo woMthethosivivinywa.”

Ngaphezu kwalokho, iNkantolo yoMthethosisekelo yaqhubeka yathi:

“...izivikelo zokuqinisekisa ukulandelwa kwenqubokusebenza efanele zenzelwe ukuvumela izifundazwe ukuthi zikhulume ngezwi elinesisindo esithe xaxa futhi zizwakalise ilaka lazo kakhudlwana ekushayweni kwemithetho ethinta zona kakhulu njengoba zibaluleke kakhulu endimeni yeNCOP yokuqinisekisa ukuthi izimfuno zezifundazwe ziyabhekelelwa kuhulumeni kazwelonke. . .”(bheka indinyana yama-66)

Njengoba iNkantolo yanquma ecaleni likaTongoane, ‘uMthethosivivinywa kumele uhlukaniswe njengoMthethosivivinywa wesigatshana sama-76 ngisho kunesimiselo esisodwa kuphela noma okuthile okukodwa okuqukethwe kuwona okuphathelene ikakhulukazi nomkhakha wokushaywa komthetho okuSheduli 4’.

Ngakho-ke sinombono wokuthi uMthethosivivinywa kumele ube nguMthethosivivinywa wesigaba sama-76, okuwuMthethosivivinywa ojwayelekile othinta izifundazwe njengoba ungena ngaphansi komkhakha wokushaywa komthetho okuSheduli 4 woMthethosisekelo, okuwumkhakha “Wezolimo”.

7.2. Abeluleki Bezomthetho Bombuso banombono wokuthi akudingekile ukuthi lo Mthethosivivinywa udluliselwe eNdlini Kazwelonke Yabaholi Bendabuko ngokwesigaba sama-39(1)(a) soMthetho Wezobuholi Bendabuko NobamaKhoi-San, wezi-2019 (uMthetho ongunombolo 3 wezi-2019), njengoba ungaqukethe izimiselo eziphathelene nemithetho yendabuko/yesintu noma amasiko emiphakathi yendabuko.