Western Cape Government • Wes-Kaapse Regering • URhulumente weNtshona Koloni

PROVINCE OF THE WESTERN CAPE

Provincial Gazette Extraordinary

8791

Friday, 7 July 2023

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CONTENTS

*(*Copies are obtainable at Room M21, Provincial Legislature Building, 7 Wale Street, Cape Town 8001.)*

PROVINCIAL NOTICE

The following Bill is hereby published for comment:

Western Cape Peoples Bill [B 6–2023]

P.N. 72/2023 7 July 2023

Any person or organisation wishing to submit comment on the Bill may submit input—

By email to—
Mr Johan Coetzee
jcoetzee@wcpp.gov.za

The deadline for input is Monday, 7 August 2023.

R Adams
Secretary to the Provincial Parliament

PROVINSIE WES-KAAP

Buitengewone Provinsiale Koerant

8791

Friday, 7 Julie 2023

As 'n Nuusblad by die Poskantoor Geregistreer

INHOUD

*(*Afskrifte is verkrygbaar by Kamer M21, Provinsiale Wetgewer-gebou, Waalstraat 7, Kaapstad 8001.)*

PROVINSIALE KENNISGEWING

Die volgende Wetsontwerp word hiermee vir kommentaar gepubliseer:

Wetsontwerp op die Wes-Kaapse Volk [W 6–2023]

P.K. 72/2023 7 Julie 2023

Enige persoon of organisasie wat kommentaar oor die Wetsontwerp wil indien, mag insette indien—

Per e-pos aan—
Mnr Johan Coetzee
jcoetzee@wcpp.gov.za

Die sperdatum vir insette is Maandag, 7 Augustus 2023.

R Adams
Sekretaris van die Provinsiale Parlement

BILL

To formally record the will of the people of the Western Cape to be identified as a people, who then, in accordance with customary international law, the injunctions of which are affirmed in the South African Constitution, shall be entitled to exercise their right to self-determination, and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the preamble of the Western Cape Constitution begins with the words, ''In humble submission to Almighty God, we, the people of the Western Cape'';

AND WHEREAS the indigenous people of the Western Cape were the Khoi Khoi and the San;

AND WHEREAS the region was subsequently settled by successive waves of immigrants including Dutch, German, French, Malay, British, Xhosa and other cultural groups;

AND WHEREAS over time those groups have inexorably intermingled forming the people of the Western Cape many of whom then developed a language, Afrikaans, which is indigenous to the Western Cape, and which remains the most widely spoken language in the province;

AND WHEREAS the demographic composition of the people of the Western Cape differs substantially from the rest of South Africa with minority groups forming a disproportionately large portion of the Western Cape population;

AND WHEREAS the protection of minority rights is an established principle of both constitutional democracy and international law;

AND WHEREAS the Western Cape Constitution elects to use only three of South Africa's eleven official languages, these being English, Afrikaans, and isiXhosa;

AND WHEREAS the voting record of the province has conclusively established that the people of the Western Cape hold fundamentally different political, economic, and ideological views to the remainder of South Africa;

AND WHEREAS the current system of government substantively prevents the people of the Western Cape from being governed according to their democratic will and therefore precludes them from effectively exercising their right to self-determination as guaranteed in the South African Constitution and public international law;

AND WHEREAS there is therefore a need to provide democratic mechanisms which allow the people of the Western Cape to be governed according to their democratic will;

AND WHEREAS the formal recognition that the people of the Western Cape wish to be recognised as being distinct from the people of South Africa as a whole will empower the people of the Western Cape to effectively exercise their right to self-determination;

BE IT THEREFORE ENACTED by the Provincial Parliament of the Western Cape, as follows:—

Definitions

1. In this Act, unless the context indicates otherwise—

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"international law" means to the universally recognised principles of public international and international customary law and the treaties and agreements binding upon South Africa that relate to the self-determination of peoples.

"people" has the meaning set out in Paragraph 22 of the UNESCO International Meeting of Experts on Further Study on the Concept of the Rights of Peoples – Final Report and Recommendations (Paris, November 1989)

"Western Cape Constitution" means the Constitution of the Western Cape, 1998.

Purposes of Act

2. The purposes of this Act are to give effect to—

(1) the spheres-of-government doctrine provided for in the Constitution, in terms whereof no sphere of government is subordinate to another, and all are by right entitled to determine their own affairs within the competencies conferred upon them by the Constitution, and within the framework of the provincial constitution;

(2) section 39(3) of the Constitution, which provides that the Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by legislation, to the extent that they are consistent with the Bill;

(3) Schedule 5 of the Constitution, which provides that provincial cultural matters are a matter of exclusive provincial legislative competence;

(4) section 235 of the Constitution, which recognises that self-determination is a principle of South African constitutional law;

(5) section 81*(d)* of the Western Cape Constitution, which requires that the Western Cape Government adopt and implement policies aimed at achieving the promotion of respect for the rights of cultural, religious, and linguistic communities in the Western Cape;

(6) section 39(1)*(b)* of the Constitution, which requires that when interpreting the Bill of Rights, international law must be considered;

(7) section 232 of the Constitution, which states that customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament;

(8) section 233 of the Constitution, which requires that, when interpreting legislation, any reasonable interpretation of the legislation that is consistent with international law must be preferred over any alternative interpretation that is inconsistent with international law;

(9) the sources of international law provided for in Article 38(1) of the Statute of the International Court of Justice of 1946;

(10) the African Charter on Human and Peoples' Rights ratified by South Africa on 9 July 1996, which states that all peoples have the right to exist, that their right to self-determination is unquestionable and inalienable, and that they can freely pursue their economic and social development according to the policy they have freely chosen;

(11) the International Covenant on Civil and Political Rights ratified by South Africa on 10 December 1998, which states that all peoples have the right to self-determination, and by virtue of that right they can freely determine their political status and freely pursue their economic, social, and cultural development;

(12) the International Covenant on Economic, Social, and Cultural Rights ratified by South Africa on 12 January 2015, which states that all peoples have the right to self-determination, and by virtue of that right they can freely determine their political status and freely pursue their economic, social, and cultural development.

Unique and distinct people

3. (1) The people of the Western Cape (hereafter recognised and identified as 'the Western Cape people') shall be recognised as unique with their own culturally, linguistically, and ideologically distinct values.

(2) The Western Cape people shall be recognised as distinct from the South African people as a whole, even though they may elect to form a part of the South African people, who, in common with other cultural communities and/or peoples located within the Republic, then may collectively comprise the South African people as a whole.

Self-determination

4. (1) As an ideologically unique and distinct people, and in accordance with international law, the South African Constitution, and the Western Cape Constitution, the Western Cape people shall—

(a) have the right to exist, to have the unquestionable and inalienable right to self-determination, and to not be precluded from effectively exercising said self-determination within the Republic of South Africa.

(b) have the right to freely determine their political status, and to freely pursue their political, economic, social, and cultural development, according to the policy which they have freely chosen.

Short Title

4. This Act is called the Western Cape Peoples Act, 2023, and comes into operation on a date determined by the Premier by proclamation in the *Provincial Gazette*.

MEMORANDUM ON THE OBJECTS OF THE WESTERN CAPE PEOPLES BILL

1. STATEMENT BY THE PRIVATE MEMBER IN CHARGE OF THE BILL

1.1. I am satisfied that this bill falls within the 'Functional Areas of Exclusive Provincial Legislative Competence' set out in schedule 5 of the Constitution in that it is a 'Provincial cultural matter' and that no other sphere of government is empowered to exclusively represent the Western Cape people in this matter and to express their democratic will.

2. OBJECTS OF THE BILL

The objects of the bill are to:

2.1. affirm the existing constitutional reality that the people of the Western Cape are distinct from the South African people as a whole;

2.2. affirm that, for the purposes of applying 'peoples' rights' contained in international law, using the description of a people expressly developed for this purpose by UNESCO, the people of the Western Cape are a 'people';

2.3. affirm that as a 'people' they are inalienably and undeniably entitled to self-determination and to pursue their economic, social, and cultural development according to the policy they have freely chosen;

2.4. formally claim the right of self-determination which will then fundamentally change the constitutional balance of power between the Western Cape and the rest of South Africa in that the Western Cape will no longer be able to be forced to pursue policies which its people oppose, but which are forced onto it because those policies are supported by the majority of the 'South African people as a whole'.

3. PRINCIPLES OF THE BILL

The key principles are that;

3.1. The people of the Western Cape are distinct from the South African people as a whole, even though they may form a constituent part of the South African people as a whole;

3.2. The Western Cape has a unique history which differs substantively from the history of other regions of South Africa;

3.3. The people of the Western Cape meet the definition of a 'People' set out by UNESCO;

3.4. international law states that all peoples have the right to self-determination and that self-determination is a right which states are not only prohibited from denying, but are actively required to promote;

3.5. the South African Constitution affirms the authority of international law;

3.6. South Africa has ratified several international agreements in which it has sworn to uphold the right of self-determination;

3.7. the South African Constitution affirms the right of self-determination but is silent on how this right can be exercised by the Western Cape people specifically;

3.8. the capacity to meaningfully exercise self-determination is gravely consequential to the current and future welfare of the Western Cape people. This is exasperated by the increasingly dysfunctional condition of the South African

state and the empirical reality that in the democratic era the majority of Western Cape voters have never once over a continuous period of three decades voted for the party of national government;

3.9. according to the UN, self-determination can typically be exercised in the form of either increased autonomy, federalism, independence, or unification;

3.10. the UN have stated that self-determination is an inherent component of democracy, just as democracy is inherent to self-determination.

4. IMPACT OF THE BILL

The expected impact of the bill is:

4.1. that the South African constitutional order will be forced to recognise that the Western Cape People exist and that they are entitled to exercise their right to self-determination within the Republic of South Africa;

4.2. in order to accommodate the right to self-determination, the South African Constitution will almost certainly need to be amended to recognise the legal reality that the Western Cape people cannot exercise self-determination whilst simultaneously requiring the consent of the national majority and the support of the people of other provinces to make decisions which relate exclusively to the Western Cape and how the people living there wish to be governed;

4.3. the Western Cape people have been attempting to exercise self-determination since 2019 when they elected a government which promised to pursue the devolution of powers from national to provincial government. The national government has denied the devolution of these powers despite them being formally requested, which amounts to a denial of the right to Western Cape self-determination. The South African government will no longer be able to legally sustain this position.

4.4. Federalism is the preferred policy of a clear majority of the parties making up the Western Cape provincial parliament and polling suggests this view is supported by an overwhelming majority of Western Cape voters. Were, subsequent to the passing of this bill, the Western Cape Government to table a Western Cape Federal Autonomy Bill in the National Assembly or alternatively the National Council of Provinces, and supported by the results of a provincial referendum, the South African Government would be legally obliged to grant federal autonomy to the Western Cape.

4.5. Self-determination will also empower the Western Cape people to resist constitutional changes which they do not support or condone, such as any attempt to diminish property rights, and to ensure that non-racialism is applied in the province by ending the use of racial classifications as a means to discriminate between both natural and juristic persons.

5. CONSULTATION ON THE BILL PRIOR TO ITS INTRODUCTION

This bill has been produced in collaboration with civil society, has taken into account widely expressed public sentiment which has been quantified by research, and has invited the input of the Premier and Provincial Government.

Specifically:

5.1. The Cape Independence Advocacy Group (CIAG) assisted the Freedom Front Plus with the development of the bill;

5.2. The Western Cape Premier and Western Cape Government were invited from its conception to give input into the bill;

5.3. The Western Cape Devolution Working Group (WCDWG) was invited to give input into the bill prior to its finalisation;

5.4. Provincial election results have established majority public support for increased provincial autonomy;

5.5. Independent polling has found that 3 in 4 Western Cape voters support increased provincial autonomy.

6. CONTENTS OF THE BILL

6.1. **The pre-amble** records:

6.1.1. that the Western Cape Constitution already identifies the people of the Western Cape as being distinct from the South African people as a whole;

6.1.2. the history of the Western Cape and the cultural development of the Western Cape people;

6.1.3. the development of the Afrikaans language which is indigenous to what is now the Western Cape;

6.1.4. the adoption by the Western Cape of only 3 of South Africa's official languages;

6.1.5. the different demographic composition of the people of the Western Cape where ethnic minorities form a far greater portion of the population than in South Africa as a whole;

6.1.6. the ideological differences between the Western Cape and South Africa as a whole as empirically demonstrated by election results post 1994;

6.1.7. the necessity for the bill to ensure that the Western Cape people are governed according to their democratic will and freely chosen policy; and

6.1.8. that the formal recognition that a 'Western Cape People' exist will empower them to exercise their right to self-determination.

6.2. **Clause 1** of the bill records;

6.2.1. The definitions used in the bill

6.3. **Clause 2** of the bill records the purposes of the bill which are to;

6.3.1. establish the Western Cape Provincial Parliament's authority to legislate in this matter;

6.3.2. to record that the Western Cape Government is constitutionally compelled to adopt and implement policies which promote, protect, and preserve the cultural, religious and linguistic communities of the Western Cape;

6.3.3. to affirm that self-determination is a principle of the South African Constitution;

6.3.4. to record that South Africa has signed a number of international agreements where it has expressly sworn to uphold and promote self-determination;

6.3.5. to record the authority of international law as set out in the South African Constitution; and

6.3.6. to record that self-determination is a principle of international law which South Africa is obliged to uphold, protect, and promote.

6.4. **Clause 3** of the bill;

6.4.1. formally recognises that 'the people of the Western Cape' are distinct from the 'South African people as a whole'; and

6.4.2. formally identifies the 'people of the Western Cape' as the 'Western Cape People'.

6.5. **Clause 4** of the bill

6.5.1. formally records that as a 'people', the 'Western Cape People' are entitled to exercise self-determination within the Republic of South Africa; and

6.5.2. that in exercising their right to self-determination, they shall be entitled to pursue their political, economic, social, and cultural development according to the policy which they have freely chosen.

6.6. **Clause 5** of the bill

6.6.1. Provides for the short title and the commencement date of the bill.

7. FINANCIAL IMPACT ON THE STATE

7.1. The costing will be undertaken and presented when the Bill is finalised and passed.

WETSONTWERP

Om formeel die wens van die mense van die Wes-Kaap aan te teken om geïdentifiseer te word as volk wat ingevolge volkeregtelike gewoontereg, waarvan die injunksies bevestig word in die Suid-Afrikaanse Grondwet, daartoe geregtig sal wees om hulle reg tot selfbeskikking uit te oefen sowel as om voorsiening te maak vir enige sake wat daaruit mag voortspruit.

AANHEF

NADEMAAL die aanhef van die Grondwet van die Wes-Kaap met die volgende woorde begin: ''In nederige erkentlikheid teenoor die Almagtige God, neem ons, die mense van Wes-Kaap'';

EN NADEMAAL die inheemse volke van die Wes-Kaap die Khoi-Khoi en die San was;

EN NADEMAAL opeenvolgende vlae van immigrante, insluitende Nederlandse, Duitse, Franse, Maleise, Britse, Xhosa en ander kulturele groepe, hulle vervolgens in die streek gevestig het;

EN NADEMAAL hierdie groepe mettertyd onlosmaaklik vermeng geraak het om die volk van die Wes-Kaap te vorm, waarvan baie toe hulle eie taal ontwikkel het, naamlik Afrikaans, wat inheems tot die Wes-Kaap is, en wat steeds die mees gesproke taal in die provinsie is;

EN NADEMAAL die demografiese samestelling van die mense van die Wes-Kaap aansienlik verskil van die res van Suid-Afrika met minderheidsgroepe wat disproporsionele groot deel van die Wes-Kaapse bevolking uitmaak;

EN NADEMAAL die beskerming van minderheidsregte gevestigde beginsel is van beide die grondwetlike demokrasie en die volkereg;

EN NADEMAAL die Grondwet van die Wes-Kaap verkies om slegs drie van Suid-Afrika se elf amptelike tale te gebruik, naamlik Afrikaans, Engels en isiXhosa;

EN NADEMAAL die stemrekord van die provinsie oortuigend vasgestel het dat die mense van die Wes-Kaap politiese, ekonomiese en ideologiese standpunte huldig wat fundamenteel verskil van die res van Suid-Afrika;

EN NADEMAAL die huidige regeringstelsel die mense van die Wes-Kaap wesenlik verhinder om volgens hulle demokratiese wil regeer te word en hulle dus verhinder om hulle reg tot selfbeskikking effektief uit te oefen, soos gewaarborg in die Suid-Afrikaanse Grondwet en die volkereg;

EN NADEMAAL daar behoefte bestaan om demokratiese meganismes daar te stel wat die mense van die Wes-Kaap sal toelaat om volgens hulle demokratiese wil regeer te word;

EN NADEMAAL die formele erkenning dat die mense van die Wes-Kaap erken wil word as afsonderlik van die mense van Suid-Afrika as geheel, die mense van die Wes-Kaap sal bemagtig om hulle reg tot selfbeskikking effektief uit te oefen;

DERHALWE WORD deur die Provinsiale Parlement van die Wes-Kaap as volg uitgevaardig:—

Woordomskrywings

1. In hierdie Wet, tensy anders vermeld in die konteks—

beteken **"Grondwet"** die Grondwet van die Republiek van Suid-Afrika, 1996;

beteken **"die volkereg"** die universeel erkende beginsels van die volkereg en volkeregtelike gewoontereg sowel as die verdrae en ooreenkomste bindend op Suid-Afrika wat verband hou met die selfbeskikking van volke;

dra **"volke"** die betekenis soos uiteengesit in Paragraaf 22 van UNESCO se Internasionale Vergadering van Deskundiges oor Verdere Studie oor die Konsep van die Regte van Volke – Finale Verslag en Aanbevelings (Parys, November 1989); en

beteken die **"Wes-Kaapse Grondwet"** die Grondwet van die Wes-Kaap, 1998.

Oogmerke van die Wet

2. Die oogmerke van hierdie Wet is om uitvoering te gee aan—

(1) die sfere-van-regering-doktrine waarvoor voorsiening gemaak word in die Grondwet, ingevolge waarvan geen regeringsfeer ondergeskik is aan ander nie, en almal by regte is om hulle eie sake te behartig binne die bevoegdhede wat ingevolge die Grondwet aan hulle opgedra is, en binne die raamwerk van die provinsiale grondwet;

(2) artikel 39(3) van die Grondwet wat bepaal dat die Handves van Regte nie die bestaan ontken van ander regte of vryhede wat deur wetgewing erken of verleen word nie, in die mate waarin daardie regte of vryhede met die Handves bestaanbaar is;

(3) bylae 5 van die Grondwet wat bepaal dat provinsiale kulturele sake saak van eksklusiewe provinsiale wetgewende bevoegdheid is;

(4) artikel 235 van die Grondwet wat erken dat selfbeskikking beginsel van die Suid-Afrikaanse grondwetlike reg is;

(5) artikel 81*(d)* van die Wes-Kaapse Grondwet wat vereis dat die Wes-Kaapse regering beleid moet aanneem en uitvoer ter bevordering van respek vir die regte van kulturele, godsdienstige en taalgemeenskappe in die Wes-Kaap;

(6) artikel 39(1)*(b)* van die Grondwet wat vereis dat met die uitleg van die Handves van Regte moet die volkereg in ag geneem word;

(7) artikel 232 van die Grondwet, wat bepaal dat volkeregtelike gewoontereg regskrag het in die Republiek tensy dit met die Grondwet of Parlementswet onbestaanbaar is;

(8) artikel 233 van die Grondwet wat bepaal dat by die uitleg van wetgewing moet enige redelike uitleg van die wetgewing wat met die volkereg bestaanbaar is, voorkeur geniet bo enige alternatiewe uitleg wat met die volkereg onbestaanbaar is;

(9) die bronne van volkereg waarvoor voorsiening gemaak word in artikel 38(1) van die Statuut van die Internasionale Geregshof van 1946;

(10) die Afrika-Handves oor Mense- en Volkeregte wat op 9 Julie 1996 deur Suid-Afrika bekragtig is, wat bepaal dat alle volke die reg het om te bestaan, dat hulle reg tot selfbeskikking onbetwisbaar en onvervreembaar is, en dat hulle vrylik hulle ekonomiese en maatskaplike ontwikkeling kan nastreef volgens die beleid wat hulle vrylik gekies het;

(11) die Internasionale Konvensie oor Burgerlike en Politieke Regte wat op 10 Desember 1998 deur Suid-Afrika bekragtig is, wat bepaal dat alle volke die reg tot selfbeskikking het, en uit hoofde van daardie reg kan hulle vrylik hulle politieke status bepaal en ook vrylik hulle ekonomiese, maatskaplike en kulturele ontwikkeling nastreef; en

(12) die Internasionale Verdrag oor Ekonomiese, Sosiale en Kulturele Regte wat op 12 Januarie 2015 deur Suid-Afrika bekragtig is, wat bepaal dat alle volke die reg tot selfbeskikking het, en uit hoofde van daardie reg kan hulle vrylik hulle politieke status bepaal en ook vrylik hulle ekonomiese, maatskaplike en kulturele ontwikkeling nastreef.

Unieke en afsonderlike groep mense

3. (1) Die mense van die Wes-Kaap (hierna erken en geïdentifiseer as die Wes-Kaapse Volk) sal erken word as uniek met hulle eie afsonderlike kulturele, taal- en ideologiese waardes.

(2) Die Wes-Kaapse Volk sal erken word as afsonderlik van die Suid-Afrikaanse volk as geheel, alhoewel hulle mag kies om deel te vorm van die Suid-Afrikaanse volk wat, in gemeen met ander kulturele gemeenskappe en/of mense binne die Republiek, dan gesamentlik die Suid-Afrikaanse volk as geheel uitmaak.

Selfbeskikking

4. (1) As ideologiese unieke en afsonderlike groep mense, en in ooreenstemming met die volkereg, die Suid-Afrikaanse Grondwet, en die Wes-Kaapse Grondwet, sal die Wes-Kaapse Volk—

(a) die reg hê om te bestaan, die onbetwisbare en onvervreembare reg tot selfbeskikking hê, en nie verhinder word om hierdie reg tot selfbeskikking effektief uit te oefen binne die Republiek van Suid-Afrika nie; en

(b) die reg hê om vrylik hulle politieke status te bepaal, en om vrylik hulle politiese, ekonomiese, maatskaplike en kulturele ontwikkeling te kan nastreef volgens die beleid wat hulle vrylik gekies het.

Verkorte titel

5. Hierdie Wet staan bekend as die Wet op die Wes-Kaapse Volk, 2023, en sal in werking tree op datum soos bepaal deur die Premier deur proklamasie in die *Provinsiale Koerant*.

MEMORANDUM OOR DIE OOGMERKE VAN DIE WETSONTWERP OP DIE WES-KAAPSE VOLK, 2023

1. VERKLARING DEUR DIE PRIVAATLID IN BEHEER VAN DIE WETSONTWERP

1.1. Ek is oortuig dat hierdie wetsontwerp binne die Funksionele gebiede van Eksklusiewe Provinsiale Wetgewende Bevoegdheid val, soos uiteengesit in bylae 5 van die Grondwet, en dat dit provinsiale kulturele saak is, en dat geen ander regeringsfeer sodanig bemagtig is om eksklusief die Wes-Kaapse volk in hierdie saak te verteenwoordig en om hulle demokratiese wil uit te druk nie.

2. OOGMERKE VAN DIE WETSONTWERP

Die oogmerke van die wetsontwerp is om:

2.1. die bestaande grondwetlike realiteit, dat die mense van die Wes-Kaap afsonderlik is van die Suid-Afrikaanse volk as geheel, te bevestig;

2.2. te bevestig dat, vir die doeleindes om volkeregte toe te pas soos vervat in die volkereg, die beskrywing van volk gebruik word wat uitdruklik vir hierdie doel ontwikkel is deur UNESCO, die mense van die Wes-Kaap volk is;

2.3. te bevestig dat as volk is hulle onvervreembaar en onbetwisbaar geregtig op selfbeskikking en om hulle ekonomiese, maatskaplike en kulturele ontwikkeling na te streef volgens die beleid wat hulle vrylik gekies het; en

2.4. om formeel aanspraak te maak op die reg tot selfbeskikking wat dan die grondwetlike magsbalans tussen die Wes-Kaap en die res van Suid-Afrika fundamenteel sal verander deurdat die Wes-Kaap nie meer gedwing sal kan word om beleid na te volg wat sy mense teenstaan nie, maar wat afgedwing word omdat daardie beleide deur die meerderheid van die Suid-Afrikaanse volk as geheel ondersteun word.

3. BEGINSELS VAN DIE WETSONTWERP

Die sleutelbeginsels is dat:

3.1. die mense van die Wes-Kaap afsonderlik is van die Suid-Afrikaanse volk as geheel, alhoewel hulle integrale deel van die Suid-Afrikaanse volk as geheel uitmaak;

3.2. die Wes-Kaap unieke geskiedenis het wat wesenlik verskil van die geskiedenis van die ander streke van Suid-Afrika;

3.3. die mense van die Wes-Kaap voldoen aan die definisie van volk soos uiteengesit deur UNESCO;

3.4. die volkereg bepaal dat alle volke die reg het tot selfbeskikking en dat state nie net verbied word om die reg tot selfbeskikking van hulle te ontneem nie, maar dat daar ook van state vereis word om dit aktief te bevorder;

3.5. die Suid-Afrikaanse Grondwet die gesag van die volkereg bevestig;

3.6. Suid-Afrika verskeie internasionale ooreenkomste bekragtig het waarvolgens dit plegtig beloof om die reg tot selfbeskikking te handhaaf;

3.7. die Suid-Afrikaanse Grondwet die reg tot selfbeskikking bevestig, maar geen melding maak van hoe sodanige reg spesifiek deur die Wes-Kaapse mense uitgeoefen behoort te word nie;

3.8. die vermoë om die reg tot selfbeskikking sinvol te kan uitoefen van kardinale belang is vir die huidige en toekomstige welstand van die Wes-Kaapse mense. Dit word onderskraag deur die toenemende wanfunksionele toestand van die Suid-Afrikaanse staat en die empiriese realiteit dat gedurende die hele demokratiese era het die meerderheid van Wes-Kaapse kiesers nie een keer tydens periode van drie opeenvolgende dekades vir die nasionale regerende party gestem nie;

3.9. volgens die VN kan selfbeskikking tipies uitgeoefen word in die vorme van groter outonomie, federalisme, onafhanklikheid en unifikasie; en

3.10. die VN voorts gestel het dat selfbeskikking inherente komponent van demokrasie is, net soos wat demokrasie inherent is tot selfbeskikking.

4. IMPAK VAN DIE WETSONTWERP

Die verwagte impak van die wetsontwerp is dat:

4.1. die Suid-Afrikaanse grondwetlike orde gedwing sal word om te erken dat die Wes-Kaapse Volk bestaan en dat hulle daartoe geregtig is om hulle reg tot selfbeskikking uit te oefen binne die Republiek van Suid-Afrika;

4.2. om die reg tot selfbeskikking te akkommodeer, sal die Suid-Afrikaanse Grondwet heel waarskynlik gewysig moet word om die regsrealiteit te erken dat die Wes-Kaapse Volk nie die reg tot selfbeskikking kan uitoefen terwyl dit terselfdertyd die toestemming van die nasionale meerderheid en die ondersteuning van die mense van ander provinsies benodig om besluite te neem wat uitsluitlik verband hou met die Wes-Kaap en hoe die mense wat daar woon, regeer wil word nie;

4.3. die Wes-Kaapse Volk al sedert 2019 poog om selfbeskikking uit te oefen toe regering verkies is wat beloof het om die afwenteling van magte vanaf nasionale na provinsiale regeringsvlak na te streef. Die nasionale regering het egter hierdie afwenteling van magte geweier ten spyte daarvan dat dit formeel versoek is, wat neerkom op die ontkenning van die Wes-Kaap se reg tot selfbeskikking. Die Suid-Afrikaanse regering sal nie meer hierdie posisie wettiglik kan handhaaf nie;

4.4. federalisme die voorkeurbeleid is van duidelike meerderheid van die partye wat die Wes-Kaapse Provinsiale Parlement uitmaak en peilings dui daarop dat hierdie siening deur oorweldigende meerderheid Wes-Kaapse kiesers ondersteun word. Sou die Wes-Kaapse regering, na die goedkeuring van hierdie wetsontwerp, Wes-Kaapse Wetsontwerp op Federale Outonomie ter tafel lê in die Nasionale Vergadering of andersins in die Nasionale Raad van Provinsies, gestaaf deur die resultate van provinsiale referendum, sal die Suid-Afrikaanse regering wetlik verplig wees om federale outonomie aan die Wes-Kaap toe te staan; en

4.5. selfbeskikking ook die Wes-Kaapse Volk sal bemagtig om grondwetlike wysigings wat hulle nie ondersteun of kondoneer nie, soos enige pogings om eiendomsregte in te kort, teen te staan sowel as om te verseker dat nie-rassigheid toegepas word in die provinsie deur einde te bring aan die gebruik van rasseklassifikasies as manier om te diskrimineer tussen beide natuurlike en regspersone.

5. KONSULTASIE RAKENDE DIE WETSONTWERP ALVORENS DIE BEKENDSTELLING DAARVAN

Hierdie wetsontwerp is opgestel in samewerking met die burgerlike samelewing, neem algemene standpunte uitgedruk deur die publiek en wat deur navorsing gekwantifiseer is in ag, en die Premier en die Provinsiale Regering is genooi om insette te lewer.

In besonder:

5.1. het die Cape Independence Advocacy Group (CIAG) die Vryheidsfront Plus bygestaan met die opstel van die wetsontwerp;

5.2. is die Wes-Kaapse Premier en Wes-Kaapse regering van meet af genooi om insette op die wetsontwerp te lewer;

5.3. is die Western Cape Devolution Working Group (WCDWG) ook genooi om insette te lewer alvorens die wetsontwerp gefinaliseer is;

5.4. het provinsiale verkiesingsresultate meerderheid openbare steun vir groter provinsiale outonomie bevestig; en

5.5. het onafhanklike peilings ook bevind dat drie uit elke vier Wes-Kaapse kiesers groter provinsiale outonomie steun.

6. INHOUD VAN DIE WETSONTWERP

6.1. Die **aanhef** vermeld:

6.1.1. dat die Wes-Kaapse Grondwet reeds die mense van die Wes-Kaap identifiseer as afsonderlik van die Suid-Afrikaanse volk as geheel;

6.1.2. die geskiedenis van die Wes-Kaap en die kulturele ontwikkeling van die Wes-Kaapse Volk;

6.1.3. die ontwikkeling van die Afrikaanse taal wat inheems is tot wat tans bekendstaan as die Wes-Kaap;

6.1.4. die gebruik van slegs drie van Suid-Afrika se amptelike tale deur die Wes-Kaap;

6.1.5. die anderse demografiese samestelling van die mense van die Wes-Kaap waar etniese minderhede veel groter deel van die bevolking uitmaak as in Suid-Afrika as geheel;

6.1.6. die ideologiese verskille tussen die Wes-Kaap en Suid-Afrika as geheel, soos empiries bewys deur verkiesingsresultate ná 1994;

6.1.7. die noodsaaklikheid van die wetsontwerp om te verseker dat die mense van die Wes-Kaap volgens hulle demokratiese wil en vrylik gekose beleid regeer word; en

6.1.8. dat die formele erkenning dat Wes-Kaapse Volk bestaan hulle sal bemagtig om hulle reg tot selfbeskikking uit te oefen.

6.2. **Klousule 1** van die wetsontwerp vermeld:

6.2.1. die woordomskrywings wat gebruik word in die wetsontwerp.

6.3. **Klousule 2** van die wetsontwerp vermeld die oogmerke van die wetsontwerp om:

6.3.1. die Wes-Kaapse Provinsiale Parlement se gesag te vestig om wette uit te vaardig aangaande hierdie saak;

6.3.2. aan te teken dat die Wes-Kaapse regering grondwetlik verplig is om beleide aan te neem en uit te voer om die kulturele, godsdienstige en taalgemeenskappe van die Wes-Kaap te bevorder, beskerm en bewaar;

6.3.3. te bevestig dat selfbeskikking beginsel is van die Suid-Afrikaanse Grondwet;

6.3.4. aan te teken dat Suid-Afrika verskeie internasionale ooreenkomste onderteken het waarvolgens dit plegtig beloof om die reg tot selfbeskikking te handhaaf en te bevorder;

6.3.5. om die gesag van die volkereg, soos uiteengesit in die Suid-Afrikaanse Grondwet, aan te teken; en

6.3.6. om aan te teken dat selfbeskikking beginsel is van die volkereg, wat Suid-Afrika verplig is om te handhaaf, beskerm en bevorder.

6.4. **Klousule 3** van die wetsontwerp:

6.4.1. erken die mense van die Wes-Kaap formeel as afsonderlik van die Suid-Afrikaanse volk as geheel ; en

6.4.2. identifiseer die mense van die Wes-Kaap formeel as die Wes-Kaapse Volk .

6.5. **Klousule 4** van die wetsontwerp:

6.5.1. vermeld formeel dat as volk is die Wes-Kaapse Volk geregtig daarop om selfbeskikking uit te oefen binne die Republiek van Suid-Afrika; en

6.5.2. vermeld ook dat hulle met die uitoefening van hulle reg tot selfbeskikking ook geregtig daarop sal wees om hulle politiese, ekonomiese, maatskaplike en kulturele ontwikkeling na te streef volgens die beleid wat hulle vrylik gekies het.

6.6. **Klousule 5** van die wetsontwerp:

6.6.1. voorsien die verkorte titel van die wetsontwerp sowel as die datum waarop die wetsontwerp in werking sal tree.

7. FINANSIËLE IMPAK OP DIE STAAT

7.1. Kosteberekeninge sal gedoen en voorgelê word wanneer die wetsontwerp gefinaliseer en goedgekeur is.

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