

CONTENTS

<i>No.</i>		<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICE			
Justice and Constitutional Development, Department of			
<i>General Notice</i>			
639	Constitution of the Republic of South Africa, 1996: Constitution Thirteenth Amendment Bill of 2007: For public comments	.	3 29910

INHOUD

<i>No.</i>		<i>Bladsy No.</i>	<i>Koerant No.</i>
ALGEMENE KENNISGEWING			
Justisie en Staatkundige Ontwikkeling, Departement van			
<i>Algemene Kennisgewing</i>			
639	Grondwet van die Republiek van Suid-Afrika, 1996: Dertiende Wysigingswetsontwerp op die Grondwet van 2007: Vir openbare kommentaar	.	8 29910

GENERAL NOTICE
ALGEMENE KENNISGEWING

NOTICE 639 OF 2007

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

PUBLICATION OF BILL AMENDING CONSTITUTION

The Minister for Justice and Constitutional Development intends introducing the Constitution Thirteenth Amendment Bill of 2007, in the National Assembly. The Bill is hereby published for public comment in accordance with section 74(5)(a) of the Constitution of the Republic of South Africa, 1996. Any person wishing to comment on the proposed amendments is invited to submit written comments to the Minister for Justice and Constitutional Development. Comments should kindly be directed for the attention of Mr J J Labuschagne, Private Bag X 81, Pretoria, 0001, by not later than 25 June 2007.

(Electronic mail address: JolabuschagneCaJjusticc.gov.za)

CONSTITUTION THIRTEENTH AMENDMENT BILL

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

GENERAL EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to correct invalid provisions inserted into the Constitution; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of Schedule 1A to the Constitution of the Republic of South Africa, 1996, as inserted by section 4 of the Constitution Twelfth Amendment Act of 2005

1. Schedule 1A to the Constitution of the Republic of South Africa, 1996, is hereby amended **by-**

- (a) the substitution for the determination of the geographical area of the Province of the Eastern Cape of the following determination:

"The Province of the Eastern Cape

Map No.3 of Schedule 1 to Notice 1998 of 2005

Map No.6 of Schedule 2 to Notice 1998 of 2005

Map No.7 of Schedule 2 to Notice 1998 of 2005

Map No.8 of Schedule 2 to Notice 1998 of 2005

Map No.9 of Schedule 2 to Notice 1998 of 2005

Map No. 10 of Schedule 2 to Notice 1998 of 2005

Map No. 11 of Schedule 2 to Notice 1998 of 2005"; and

- (b) the substitution for the determination of the geographical area of the Province of KwaZulu-Natal of the following determination:

"The Province of KwaZulu-Natal

Map No. 22 of Schedule 2 to Notice 1998 of 2005

Map No. 23 of Schedule 2 to Notice 1998 of 2005

Map No. 24 of Schedule 2 to Notice 1998 of 2005

Map No. 25 of Schedule 2 to Notice 1998 of 2005

Map No. 26 of Schedule 2 to Notice 1998 of 2005

Map No. 27 of Schedule 2 to Notice 1998 of 2005

Map No. 28 of Schedule 2 to Notice 1998 of 2005

Map No. 29 of Schedule 2 to Notice 1998 of 2005

Map No. 30 of Schedule 2 to Notice 1998 of 2005

Map No. 31 of Schedule 2 to Notice 1998 of 2005

Map No. 32 of Schedule 2 to Notice 1998 of 2005".

Short title

2. This Act is called the Constitution Thirteenth Amendment Act of 2007.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION THIRTEENTH
AMENDMENT BILL OF 2007

(Published in terms of Rule 258(3) of the Rules of the National Assembly)

1. BACKGROUND

1.1 During December 2005 Parliament passed-

- (a) the Constitution Twelfth Amendment Bill of 2005 [B33B-2005] (now the Constitution Twelfth Amendment Act of 2005), that amended the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the "Constitution"), to re-determine the geographical areas of the nine provinces of the Republic of South Africa to, amongst others, avoid municipal boundaries stretching over provincial boundaries; and
- (b) the Cross-boundary Municipalities Laws Repeal and Related Matters Bill, 2005 [B36B-2005] (now Act No. 23 of 2005), that provided for consequential matters as a result of the re-alignment of former cross-boundary municipalities and the re-determination of the geographical areas of provinces.

1.2 The constitutional validity of the Constitution Twelfth Amendment Act of 2005 (hereinafter referred to as the "Twelfth Amendment"), and the Cross-boundary Municipalities Laws Repeal and Related Matters Act, 2005 (hereinafter referred to as the "Repeal Act"), was challenged in the Constitutional Court in the case of *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (5) BCLR 622 (CC). In terms of these Acts the provincial boundary between, amongst others, the provinces of the Eastern Cape and KwaZulu-Natal was altered so that the area that previously formed the local municipality of Matatiele (hereinafter referred to as the "Matatiele municipality") was transferred from the province of KwaZulu-Natal to the province of the Eastern Cape and new municipal boundaries were created as a consequence.

1.2.1 On 27 February 2006 the Court rejected the applicants' main argument that in passing the Twelfth Amendment Parliament unconstitutionally usurped the powers of the Municipal Demarcation Board to re-determine municipal boundaries. The Court further ruled that the local government elections scheduled for 1 March 2006 should be proceeded with. The Court, however, called for further argument on, amongst others, whether that part of the Twelfth Amendment that concerns the provinces of the Eastern Cape and KwaZulu-Natal was passed in accordance with the procedural provisions of the Constitution. This further hearing was to take place after the said local government elections had been held and the results had been declared.

1.2.2 On 18 August 2006 the Constitutional Court, in *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2007 (1) BCLR 47 (CC) (hereinafter referred to as the "*Matatiele-case*"), declared that part of the Twelfth Amendment which transferred the Matatiele municipality from the province of KwaZulu-Natal to the province of the Eastern Cape to be inconsistent with the Constitution and therefore invalid. The order of invalidity was based on a procedural defect, namely the failure of the KwaZulu-Natal provincial legislature to facilitate public involvement, as

required by section 118(1)(a) of the Constitution, when it considered whether or not to approve that part of the Constitution Twelfth Amendment Bill of 2005 that transferred the Matatiele municipality from the province of KwaZulu-Natal to the province of the Eastern Cape. As a result of the interrelationship between the Twelfth Amendment and the Repeal Act, the Court also declared that part of the Repeal Act which relates to the Matatiele municipality to be inconsistent with the Constitution and therefore invalid. The orders of invalidity were suspended for a period of 18 months, during which period Parliament has the opportunity to correct the constitutional defect that led to the order of invalidity.

1.3 The Constitutional Court's order of invalidity was formulated with reference to the Matatiele municipality only. It could, however, be argued that the failure of the KwaZulu-Natal provincial legislature to consult on the proposed changes to its provincial boundary also affects other boundary changes impacting on the province of KwaZulu-Natal. It could, therefore, further be argued that because the order of invalidity was based on a procedural defect, the other provisions of the Twelfth Amendment that effected boundary changes to the province of KwaZulu-Natal will, if challenged in the Constitutional Court, also be found to be unconstitutional as a result of the failure of the KwaZulu-Natal provincial legislature to facilitate the required public involvement.

1.4 The view has been expressed that although the constitutional defect that gave rise to the order of invalidity only relates to the failure of the KwaZulu-Natal provincial legislature to facilitate the required public involvement by not consulting on the proposed changes to its provincial boundary, it appears not possible to attend to this defect in isolation. As a result of the "knock-on effect" on municipalities that are now located in the province of the Eastern Cape, the further view has been expressed that any proposed legislative amendments that are intended to rectify the constitutional defect that led to the Constitutional Court's order of invalidity must also include references to the province of the Eastern Cape.

2. OBJECTS OF BILL

2.1 From the judgment in the *Matatiele-case* it is clear that new legislation, namely a Constitution Amendment Bill, must be processed afresh in a manner that complies with all constitutional and procedural requirements.

2.2 The Bill is premised on the principle that only those provisions of the Constitution that are affected by the failure of the KwaZulu-Natal provincial legislature to have facilitated the required public involvement (in other words all the provisions that refer directly to the provinces of the Eastern Cape and KwaZulu-Natal), are to be substituted and re-enacted.

2.3 The Bill therefore seeks to amend the Constitution so as to substitute and re-enact those provisions of the Constitution that have been declared to be inconsistent with the Constitution and therefore invalid by the Constitutional Court in the *Matatiele-case*.

2.4 Although the judgment in the *Matatiele-case* relates to the Matatiele municipality

only, it is, for the reasons set out in paragraphs 1.3 and 1.4 necessary to substitute and re-enact all the provisions in the Constitution that refer directly to the provinces of the Eastern Cape and KwaZulu-Natal and not only those that refer to the Matatiele municipality.

2.5 The Eastern Cape provincial legislature facilitated the required public involvement when it considered whether or not to approve that part of the Constitution Twelfth Amendment Bill of ZOOS that concerned it. The Bill, however, also seeks to substitute and re-enact those provisions of the Constitution that refer directly to the province of the Eastern Cape and, therefore, the Eastern Cape provincial legislature must again facilitate the required public involvement when it considers whether or not to approve that part of the Bill that concerns it.

3. PARLIAMENTARY PROCEDURE

3.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the proposed amendments fall within the ambit of section 74(3)(b) of the Constitution and consequently require the approval of both the National Assembly and the National Council of Provinces.

3.2 As the Bill is intended to re-determine provincial boundaries, the National Council of Provinces may not, in terms of section 74(8) of the Constitution, pass the Bill unless it has been approved by the legislatures of the provinces concerned. Furthermore, the legislatures of the provinces of the Eastern Cape and KwaZulu-Natal must, in considering whether or not to approve that part of the Bill that concerns them, facilitate public involvement as required by section 118(1)(a) of the Constitution.

KENNISGEWING 639 VAN 2007

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

PUBLIKASIE VAN WETSONTWERP WAT GRONDWET WYSIG

Die Minister vir Justisie en Staatkundige Ontwikkeling beoog om die Dertiende Wysigingswetsontwerp op die Grondwet van 2007 by die Nasionale Vergadering in te dien. Die Wetsontwerp word ooreenkomstig artikel 74(5)(a) van die Grondwet van die Republiek van Suid-Afrika, 1996, hierby vir openbare kommentaar gepubliseer. Enige persoon wat wens am kommentaar op die voorgestelde wysigings te lewer, word uitgenooi om skriftelike komrnentaar aan die Minister vir Justisie en Staatkundige Ontwikkeling voor te lê. Kommentaar moet asseblief nie later nie as 25 Junie 2007 vir die aandag van mnr J J Labuschagne, Privaatsak X 81, Pretoria, 0001, gerig word. (Elektroniese posadres: Jolabnschagne@justice.gov.za)

DERTIENDE WYSIGINGSWETSONTWERP OP DIE GRONDWET

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

ALGEMENE VERDUIDELIKENDE NOTA:

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WETSONTWERP

Tot wysiging van die Grondwet van die Republiek van Suid-Afrika, 1996, ten einde ongeldige bepalings in die Grondwet ingevoeg, reg te stel; en om voorsiening te maak vir aangeleenthede wat daannee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:-

Wysiging van Bylae 1A by die Grondwet van die Republiek van Suid-Afrika, 1996, soos ingevoeg deur artikel 4 van die Twaalfde Wysigingswet op die Grondwet van 2005

1. Bylae 1A by die Grondwet van die Republiek van Suid-Afrika, 1996, word hierby gewysig deur-

- (a) die bepaling van die geografiese gebied van die Provinsie van die Oos-Kaap deur die volgende bepaling te vervang:

"Die Provinsie van die Oos-Kaap

Kaart No. 3 van Bylae 1 by Kennisgewing 1998 van 2005

Kaart No. 6 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 7 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 8 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 9 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 10 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 11 van Bylae 2 by Kennisgewing 1998 van 2005"; en

- (b) die bepaling van die geografiese gebied van die Provinsie van KwaZulu-Natal deur die volgende bepaling te vervang:

"Die Provinsie van KwaZulu-Natal

Kaart No. 22 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 23 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 24 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 25 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 26 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 27 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 28 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 29 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 30 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 31 van Bylae 2 by Kennisgewing 1998 van 2005

Kaart No. 32 van Bylae 2 by Kennisgewing 1998 van 2005".

Kort titel

2. Hierdie Wet heet die Dertiende Wysigingswet op die Grondwet van 2007.

MEMORANDUM OOR DIE OOGMERKE VAN DIE DERTIENDE
WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN 2007
(Gepubliseer ingevolge **Reël** 258(3) van die **Reëls** van die Nasionale Vergadering)

1. AGTERGROND

1.1 Gedurende Desember 2005 het die Parlement-

- (a) die Twaalfde Wysigingswetsontwerp op die Grondwet van 2005 [B33B-2005] (nou die Twaalfde Wysigingswet op die Grondwet van 2005), wat die Grondwet van die Republiek van Suid-Afrika, 1996 (hierna die "Grondwet" genoem), gewysig het om die geografiese gebiede van die nege provinsies van die Republiek van Suid-Afrika te herbepaal om, onder andere, te voorkom dat munisipale grense oor provinsiale grense strek; en
- (b) die Wetsontwerp op die Herroeping van Wette Betreffende Oorgrensmunisipaliteite en Aanverwante Aangeleenthede, 2005 [B36B-2005] (noll Wet No. 23 van 2005), wat voorsiening gemaak het vir gevolglike aangeleenthede uit hoofde van die herskikking van voormalige oorgrensmunisipaliteite en die herbepaling van die geografiese gebiede van provinsies,

aangeneem.

1.2 Die grondwetlike geldigheid van die Twaalfde Wysigingswet op die Grondwet van 2005 (hierna die "Twaalfde Wysiging" genoem), en die Wet op die Herroeping van Wette Betreffende Oorgrensmunisipaliteite en Aanverwante Aangeleenthede, 2005 (hierna die "Herroepingswet" genoem), is in die Konstitusionele Hof in die saak van *"Matatiele Municipality and Others v President of the Republic of South Africa and Others"* 2006 (5) BCLR 622 (CC) betwis. Ingevolge hierdie Wette is die provinsiale grens tussen, onder andere, die provinsies van die Oos-Kaap en KwaZulu-Natal gewysig sodat die gebied wat voorheen die plaaslike munisipaliteit van Matatiele (hierna die "Matatiele munisipaliteit" genoem) gevorm het vanaf die provinsie van KwaZulu-Natal na die provinsie van die Oos-Kaap oorgeplaas is en nuwe munisipale grense as 'n gevolg skep is.

1.2.1 Op 27 Februarie 2006 het die Hof die applikante se hoof argument dat die Parlement in die aanneming van die Twaalfde Wysiging hom die bevoegdhede van die Munisipale Afbakeningsraad om munisipale grense te herbepaal ongrondwetlik toegesien het, verwerp. Die Hof het verder beslis dat met die plaaslike regering verkiesings geskeduleer vir 1 Maart 2006 voortgegaan moet word. Die Hof het egter aangedring op verdere betoe oor, onder andere, of daardie deel van die Twaalfde Wysiging wat die provinsies van die Oos-Kaap en KwaZulu-Natal raak ooreenkomstig die prosessuele bepaling van die Grondwet aangeneem is. Hierdie verdere verhoor moes plaasvind na die vermelde plaaslike regering verkiesings gehou is en die uitslae verklaar is.

1.2.2 Op 18 Augustus 2006 het die Konstitusionele Hof, in *"Matatiele Municipality and Others v President of the Republic of South Africa and Others"* 2007 (1) BCLR 47 (CC) (hierna die *"Matatiele-saak"* genoem), daardie deel van die Twaalfde Wysiging wat die Matatiele munisipaliteit vanaf die provinsie van KwaZulu-Natal na die provinsie van die

Oos-Kaap oorgeplaas het, strydig met die Grondwet en derhalwe ongeldig verklaar. Die bevel van ongeldigheid is gebaseer op 'n prosessuele gebrek, naamlik die versuim van die KwaZulu-Natal provinsiale wetgewer om publieke betrokkenheid te vergemaklik, soos deur artikel 118(1)(a) van die Grondwet vereis, toe hy oorweeg het om daardie deel van die Twaalfde Wysigingswetsontwerp op die Grondwet van 2005 wat die Matatiele munisipaliteit vanaf die provinsie van KwaZulu-Natal na die provinsie van die Oos-Kaap oorgeplaas het, goed te keur al dan nie. As gevolg van die onderlinge verhouding tussen die Twaalfde Wysiging en die Herroepingswet, het die Hof ook daardie deel van die Herroepingswet wat met die Matatiele munisipaliteit verband hou, strydig met die Grondwet en derhalwe ongeldig verklaar. Die bevel van ongeldigheid is vir 'n tydperk van 18 maande opgeskort, gedurende welke tydperk die Parlement die geleentheid het om die grondwetlike gebrek wat tot die bevel van ongeldigheid aanleiding gegee het, reg te stel,

1.3 Die Konstitusionele Hof se bevel van ongeldigheid is met verwysing na die Matatiele munisipaliteit alleen geformuleer. Dit kan egter geargumenteer word dat die versuim van die KwaZulu-Natal provinsiale wetgewer om op die voorgestelde veranderinge aan sy provinsiale grens oorleg te pleeg, ook ander grensveranderinge wat die provinsie van KwaZulu-Natal raak, affekteer. Dit kan daarom verder geargumenteer word dat aangesien die bevel van ongeldigheid op 'n prosessuele gebrek gebaseer is, die ander bepalings van die Twaalfde Wysiging wat grensveranderinge aan die provinsie van KwaZulu-Natal teweeggebring het, indien in die Konstitusionele Hof betwis, ook ongrondwetlik bevind sal word as gevolg van die versuim van die KwaZulu-Natal provinsiale wetgewer om die vereiste publieke betrokkenheid te vergemaklik.

1.4 Die mening is uitgespreek dat alhoewel die grondwetlike gebrek wat tot die bevel van ongeldigheid aanleiding gegee het slegs verband hou met die versuim van die KwaZulu-Natal provinsiale wetgewer om die vereiste publieke betrokkenheid te vergemaklik deur nie op die voorgestelde veranderinge aan sy provinsiale grens oorleg te pleeg nie, dit nie moontlik blyk te wees om hierdie gebrek in isolasie op te los nie. As gevolg van die "ketting-effek" op munisipaliteite wat nou in die provinsie van die Oos-Kaap gelee is, is die verdere mening uitgespreek dat enige voorgestelde wetgewende wysigings wat beoog om die grondwetlike gebrek reg te stel wat tot die Konstitusionele Hof se bevel van ongeldigheid aanleiding gegee het, ook verwysings na die provinsie van die Oos-Kaap moet insluit.

2. OOGMERKE VAN WETSONTWERP

2.1 Vanuit die uitspraak in die *Matatiele-saak* is dit duidelik dat nuwe wetgewing, naamlik 'n Wysigingswetsontwerp op die Grondwet, opnuut geprosesseer moet word op 'n wyse wat aan alle grondwetlike en prosessuele vereistes voldoen.

2.2 Die Wetsontwerp is gebaseer op die beginsel dat slegs daardie bepalings van die Grondwet wat geraak word deur die versuim van die KwaZulu-Natal provinsiale wetgewer om die vereiste publieke betrokkenheid te vergemaklik (met ander woorde al die bepalings wat direk na die provinsies van die Oos-Kaap en KwaZulu-Natal verwys),

vervang en herverorden moet word.

2.3 Die Wetsontwerp beoog daarom om die Grondwet te wysig ten einde daardie bepalings van die Grondwet te vervang en te herverorden wat deur die Konstitusionele Hof in die *Matatiele-saak* strydig met die Grondwet en derhalwe ongeldig verklaar is.

2.4 Alhoewel die uitspraak in die *Matatiele-saak* slegs met die Matatiele munisipaliteit verband hou, is dit, vir die redes uiteengesit in paragraawe 1.3 en 1.4 nodig om al die bepalings in die Grondwet wat direk na die provinsies van die Oos-Kaap en KwaZulu-Natal verwys, te vervang en te herverorden en nie slegs daardie wat na die Matatiele munisipaliteit verwys nie.

2.5 Die Oos-Kaap provinsiale wetgewer het die vereiste publieke betrokkenheid vergemaklik toe hy oorweeg het om daardie deel van die Twaalfde Wysigingswetsontwerp op die Grondwet van 2005 wat hom geraak het, goed te keur al dan nie. Die Wetsontwerp beoog egter ook om daardie bepalings van die Grondwet wat direk na die provinsie van die Oos-Kaap verwys, te vervang en te herverorden en daarom moet die Oos-Kaap provinsiale wetgewer weereens die vereiste publieke betrokkenheid vergemaklik wanneer hy oorweeg om daardie deel van die Wetsontwerp wat hom raak, goed te keur al dan nie.

3. PARLEMENTeRE PROSEDURE

3.1 Die Staatsregsadviseurs en die Departement van Justisie en Staatkundige Ontwikkeling is van mening dat die voorgestelde wysigings binne die bestek van artikel 74(3)(b) van die Grondwet val en gevolglik die goedkeuring van beide die Nasionale Vergadering en die Nasionale Raad van Provinsies vereis.

3.2 Aangesien die Wetsontwerp dit ten doel het om provinsiale grense te herbepaal, kan die Nasionale Raad van Provinsies, ingevolge artike1 74(8) van die Grondwet, die Wetsontwerp nie aanneem nie tensy dit deur die wetgewers van die betrokke provinsies goedgekeur is. Die wetgewers van die provinsies van die Oos-Kaap en KwaZulu-Natal moet verder, by oorweging om daardie deel van die Wetsontwerp wat hulle raak, goed te keur al dan nie, publieke betrokkenheid vergemaklik, soos deur artike1 118(1)(a) van die Grondwet vereis.
