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GENERAL NOTICE ALGEMENE KENNISGEWING

NOTICE 1532 OF 2008

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

PUBLICATION OF BILL AMENDING CONSTITUTION

The Minister of Justice and Constitutional Development intends introducing the Constitution Sixteenth Amendment Bill of 2009, 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 of 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 8 January 2009.

(Electronic mail address: Jolabuschagne@justice.gov.za)

CONSTITUTION SIXTEENTH AMENDMENT BILL

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

BILL

To amend the Constitution of the Republic of South Africa, 1996, in order to re-determine the geographical areas of the provinces of Gauteng and North West; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts 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, and amended by section 1 of the Constitution Thirteenth Amendment Act of 2007

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

- (a) the substitution, under the heading "The Province of Gauteng", for the reference to "Map No. 4 of Schedule 1 to Notice 1998 of 2005" of a reference to "Map No. 4 in Notice 1490 of 2008"; and
- (b) the substitution, under the heading "The Province of North West", for the reference to "Map No. 5 of Schedule 1 to Notice 1998 of 2005" of a reference to "Map No. 5 in Notice 1490 of 2008".

Short title and commencement

2. This Act is called the Constitution Sixteenth Amendment Act of 2009, and comes into operation on a date set by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION SIXTEENTH AMENDMENT BILL OF 2009 **(Published in terms of Rule 258(3) of the Rules of the National Assembly)**

1. BACKGROUND

1.1 In order to give effect to the Presidential Co-ordinating Council's resolution in 2002 that—

- (a) the notion of cross-boundary municipalities be done away with; and
- (b) provincial boundaries be reviewed so that all municipalities fall within one province or the other,

the Constitution Twelfth Amendment Act of 2005, re-determined the geographical areas of certain provinces of the Republic of South Africa to avoid municipal boundaries stretching over provincial boundaries. This resulted, amongst others, in the Merafong City Local Municipality (which includes the area of Khutsong) being incorporated into the province of North West. The residents of the Merafong City Local Municipality, and especially of Khutsong, have clearly expressed their opposition against their incorporation into the province of North West.

1.2 In *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC), the applicants challenged the validity of those parts of the Constitution Twelfth Amendment Act of 2005, that relate to the incorporation of the Merafong City Local Municipality into the province of North West. The applicants requested the Constitutional Court to declare that the provincial legislature of Gauteng had failed to comply with its obligation in terms of section 118 of the Constitution of the Republic of South Africa, 1996 (the Constitution), to facilitate public involvement in its processes leading up to the approval of the Constitution Twelfth Amendment Bill of 2005 (the Twelfth Amendment Bill) by the National Council of Provinces (the NCOP). In the alternative, they sought a declaration that the provincial legislature of Gauteng had failed to exercise its legislative powers rationally when it decided to vote in support of the relevant parts of the Twelfth Amendment Bill in the NCOP. On 13 June 2008 the Constitutional Court handed down judgment and held that "[t]he applicants have not shown that the Gauteng Provincial Legislature failed to facilitate public involvement, or acted irrationally, in supporting the Twelfth Amendment Bill in the NCOP". Consequently, the application was dismissed.

- 1.3 The residents of Khutsong have advanced various reasons for their continuous demand to be re-incorporated into the province of Gauteng. This has led to a decision being taken by Government to re-incorporate the Merafong City Local Municipality into the province of Gauteng.

2. OBJECTS OF BILL

- 2.1 The Bill intends to give effect to the decision to re-incorporate the Merafong City Local Municipality into the province of Gauteng. This is sought to be achieved by amending Schedule 1A to the Constitution in order to re-determine the geographical areas of the provinces of Gauteng and North West.
- 2.2 The Cross-boundary Municipalities Laws Repeal and Related Matters Amendment Bill, 2009 (the Repeal Bill), intends to provide for consequential matters as a result of the re-determination of the geographical areas of the provinces of Gauteng and North West.
- 2.3 In view of the interrelationship between the Bill and the Repeal Bill, the two Bills should be dealt with as a package in Parliament and should be passed by Parliament and implemented simultaneously.

3. PARLIAMENTARY PROCEDURE

- 3.1 The Department of Justice and Constitutional Development is 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 intends to re-determine the geographical areas of the provinces of Gauteng and North West, 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.

KENNISGEWING 1532 VAN 2008**DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING****PUBLIKASIE VAN WETSONTWERP WAT GRONDWET WYSIG**

Die Minister van Justisie en Staatkundige Ontwikkeling beoog om die Sestiende Wysigingswetsontwerp op die Grondwet van 2009, 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 om kommentaar op die voorgestelde wysigings te lewer, word uitgenooi om skriftelike kommentaar aan die Minister van Justisie en Staatkundige Ontwikkeling voor te lê. Kommentaar moet asseblief nie later as 8 Januarie 2009 vir die aandag van mnr J J Labuschagne, Privaatsak X 81, Pretoria, 0001, gerig word. (Elektroniese posadres: Jolabuschagne@justice.gov.za)

SESTIENDE WYSIGINGSWETSONTWERP OP DIE GRONDWET

(MINISTER VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

WETSONTWERP

Tot wysiging van die Grondwet van die Republiek van Suid-Afrika, 1996, ten einde die geografiese gebiede van die provinsies van Gauteng en Noordwes te herbepaal; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

Die Parlement van die Republiek van Suid-Afrika bepaal 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, en gewysig deur artikel 1 van die Dertiende Wysigingswet op die Grondwet van 2007

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

- (a) onder die opskrif "Die Provinsie van Gauteng" die verwysing na "Kaart No. 4 van Bylae 1 by Kennisgewing 1998 van 2005" met 'n verwysing na "Kaart No. 4 in Kennisgewing 1490 van 2008" te vervang; en
- (b) onder die opskrif "Die Provinsie van Noordwes" die verwysing na "Kaart

No. 5 van Bylae 1 by Kennisgewing 1998 van 2005" met 'n verwysing na "Kaart No. 5 in Kennisgewing 1490 van 2008" te vervang.

Kort titel en inwerkingtreeding

2. Hierdie Wet heet die Sestiende Wysigingswet op die Grondwet van 2009, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

MEMORANDUM OOR DIE OOGMERKE VAN DIE SESTIENDE WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN 2009 (Gepubliseer ingevolge Reël 258(3) van die Reëls van die Nasionale Vergadering)

1. AGTERGROND

- 1.1 Ten einde gevolg te gee aan die "Presidential Co-ordinating Council" se besluit in 2002 dat—
- (a) die idee van oorgrensmunisipaliteite mee weggedoen word; en
 - (b) provinsiale grense hersien word sodat alle munisipaliteite binne een of die ander provinsie val,
- het die Twaalfde Wysigingswet op die Grondwet van 2005, die geografiese gebiede van sekere provinsies van die Republiek van Suid-Afrika herbepaal om te voorkom dat munisipale grense oor provinsiale grense strek. Dit het, onder andere, tot gevolg gehad dat die Merafong City Plaaslike Munisipaliteit (wat die gebied van Khutsong insluit) in die provinsie van Noordwes ingelyf is. Die inwoners van die Merafong City Plaaslike Munisipaliteit, en veral van Khutsong, het hul teenkanting teen hul inlywing in die provinsie van Noordwes duidelik uitgespreek.
- 1.2 In *Merafong Demarcation Forum and Others v President of the Republic of South Africa and Others* 2008 (5) SA 171 (CC), het die applikante die geldigheid van daardie gedeeltes van die Twaalfde Wysigingswet op die Grondwet van 2005, wat verband hou met die inlywing van die Merafong City Plaaslike Munisipaliteit in die provinsie van Noordwes aangeval. Die applikante het die Konstitusionele Hof versoek om te verklaar dat die provinsiale wetgewer van Gauteng versuim het om te voldoen aan sy verpligting ingevolge artikel 118 van die Grondwet van die Republiek van Suid-Afrika, 1996 (die Grondwet), om publieke betrokkenheid te vergemaklik in sy prosesse wat gelei het tot die goedkeuring van die Twaalfde Wysigingswetsontwerp op die Grondwet van 2005 (die Twaalfde Wysigingswetsontwerp) deur die Nasionale Raad van Provinsies (die NRVP). In die alternatief, het hulle 'n verklaring versoek dat die provinsiale wetgewer van Gauteng versuim het om sy wetgewende bevoegdhede rasioneel uit te oefen toe hy besluit het om ter ondersteuning van die relevante gedeeltes van die Twaalfde Wysigingswetsontwerp in die NRVP te stem. Op 13 Junie 2008 het die

Konstitusionele Hof uitspraak gelewer en bevind dat "[t]he applicants have not shown that the Gauteng Provincial Legislature failed to facilitate public involvement, or acted irrationally, in supporting the Twelfth Amendment Bill in the NCOP". Die aansoek is gevolglik van die hand gewys.

- 1.3 Die inwoners van Khutsong het verskeie redes aangevoer vir hul voortdurende eis om in die provinsie van Gauteng heringelyf te word. Dit het gelei tot die neem van 'n besluit deur die Regering om die Merafong City Plaaslike Munisipaliteit in die provinsie van Gauteng her in te lyf.

2. OOGMERKE VAN WETSONTWERP

- 2.1 Die Wetsontwerp beoog om gevolg te gee aan die besluit om die Merafong City Plaaslike Munisipaliteit in die provinsie van Gauteng her in te lyf. Daar word beoog om dit te verwesenlik deur die wysiging van Bylae 1A by die Grondwet ten einde die geografiese gebiede van die provinsies van Gauteng en Noordwes te herbepaal.
- 2.2 Die Wysigingswetsontwerp op die Herroeping van Wette Betreffende Oorgrensmunisipaliteite en Aanverwante Aangeleenthede, 2009 (die Herroepingswetsontwerp), beoog om vir gevolglike aangeleenthede weens die herbepaling van die geografiese gebiede van die provinsies van Gauteng en Noordwes voorsiening te maak.
- 2.3 In die lig van die onderlinge verhouding tussen die Wetsontwerp en die Herroepingswetsontwerp, behoort die twee Wetsontwerpe as 'n pakket in die Parlement gehanteer te word en behoort dit tegelykertyd deur die Parlement aangeneem en geïmplementeer te word.

3. PARLEMENTÊRE PROSEDURE

- 3.1 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 beoog om die geografiese gebiede van die provinsies van Gauteng en Noordwes te herbepaal, kan die Nasionale Raad van Provinsies, ingevolge artikel 74(8) van die Grondwet, nie die Wetsontwerp aanneem nie tensy dit deur die wetgewers van die betrokke provinsies goedgekeur is.
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