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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**


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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NO. R. 745****26 JULY 2017****LEGAL AID SOUTH AFRICA ACT, 2014 (ACT No. 39 OF 2014): REGULATIONS**

The Minister of Justice and Correctional Services has, under section 23(1) of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), after receipt of recommendations of the Board of Directors, made the regulations in the Schedule.

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## Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates—

“**assets**” includes any—

- (a) movable or immovable property;
- (b) corporeal or intellectual rights to property; and
- (c) item, property or money that a legal aid applicant has received, or will in the future be entitled to receive, from the estate of any deceased person: Provided that this provision will also apply if—
  - (i) no distribution account for the deceased estate has yet been drawn up;
  - (ii) the legal aid applicant or his or her spouse has not yet taken transfer of, or received delivery of, the item, property or money; or
  - (iii) the item, property or money is held in the name of the estate or in the name of a trust as contemplated in regulation 28(3);

“**child**” means a person under the age of 18 years;

“**Children’s Act**” means the Children’s Act, 2005 (Act No. 38 of 2005);

“**Hague Convention**” means the Hague Convention on the Civil Aspects of International Child Abduction, signed at the Hague on 25 October 1980 and entered into force between the signatories on 1 December 1983;

“**household**” means family members, spouses, partners, children and parents who live together for at least four nights a week, and who share meals and resources;

“**impact legal services**” means litigious or non-litigious legal services as provided for in regulation 35;

“**legal aid applicant**” means a person applying for legal aid;

“**legal aid recipient**” means a person receiving legal aid;

“**Manual**” means the Legal Aid Manual referred to in section 24 of the Act;

“**means test**” means Legal Aid South Africa’s test to decide whether a legal aid applicant qualifies for legal aid, or not, as provided for in regulation 27;

“**merit report**” means a report by a legal practitioner which is an assessment of the facts and law pertaining to an applicant’s case to determine prospects of success to determine the provision or continuation of civil legal aid as provided for in regulation 9;

“**net monthly income**” means income from any source as contemplated in regulation 27;

“**Republic**” means the Republic of South Africa;

“**spouse**” means the—

- (a) marriage partner of a person married in terms of the Marriage Act, 1961 (Act No. 25 of 1961);
- (b) marriage partner of a person in a customary marriage as provided for by the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998); or
- (c) civil union partner of a person in a civil union concluded in terms of the Civil Union Act, 2006 (Act No. 17 of 2006); and

“**the Act**” means the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014).

**General policy**

2. (1) Legal Aid South Africa may provide legal aid in a criminal case to any accused person charged before a South African court who qualifies for legal aid in terms of these regulations.

(2) Legal aid is only available to natural persons for advice and for legal representation.

(3) Legal Aid South Africa may provide legal aid in a civil matter to—

- (a) a child who is physically resident in the Republic; or
- (b) a person who qualifies for legal aid in terms of these regulations, and who is —
  - (i) physically resident in the Republic; and
  - (ii) a citizen or permanent resident of the Republic.

(4) Legal Aid South Africa may in exceptional circumstances grant legal aid if the issues in a case are justiciable in a court of the Republic, but the legal aid applicant is not physically resident in the Republic.

(5) The requirement that a person must be physically resident in the Republic does not apply to cases pertaining to asylum seekers and the Hague Convention.

(6) The enquiry on whether or not a person is physically present in the Republic is a factual enquiry and must be conducted by Legal Aid South Africa when the legal aid applicant makes the application for legal aid: Provided that whether or not the legal aid applicant is legally entitled to be physically resident in the Republic is irrelevant and may not be taken into account.

**Criminal matters**

3. (1) Legal Aid South Africa may grant legal aid to a sentenced or detained person or an accused person in a criminal trial if it is likely that such person would suffer substantial injustice: Provided that substantial injustice might occur if that person cannot afford legal representation and the possibility that he or she might be imprisoned exists.

(2) A legal aid applicant who is charged in the High Court of South Africa or a magistrate's court for a regional division may be granted legal aid without any further enquiry into the nature and seriousness of the charge: Provided that such applicant is unable to afford the cost of his or her own legal representation that would sustain the anticipated duration of trial.

(3) A legal aid applicant who is charged in the district magistrate's court for the following offences may be granted legal aid, if the district magistrate's court has a statutory increased penal jurisdiction:

- (a) Stock theft;
- (b) any offence referred to in the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);
- (c) unlawful possession of or unlicensed dealing in firearms or ammunition;
- (d) dealing in liquor without a licence;
- (e) drunken driving;
- (f) driving under the influence of alcohol or drugs;

- (g) overloading of a vehicle as provided for by the National Road Traffic Act, 1996 (Act No. 93 of 1996);
- (h) reckless or negligent driving; and
- (i) any attempt to commit any of the offences in this regulation.

(4) A legal aid applicant who is charged in the district magistrate's court for the following common law and statutory offences may be granted legal aid:

- (a) Abduction;
- (b) administering poison or other noxious substances;
- (c) arson;
- (d) assault with intention to cause grievous bodily harm or common assault;
- (e) bigamy;
- (f) bribery;
- (g) compounding;
- (h) culpable homicide;
- (i) defeating or obstructing the ends of justice;
- (j) extortion;
- (k) forgery or uttering;
- (l) fraud;
- (m) housebreaking;
- (n) incest;
- (o) sexual assault;
- (p) kidnapping;
- (q) malicious damage to property;
- (r) murder;
- (s) public violence;
- (t) rape;
- (u) receipt of stolen property;
- (v) robbery;
- (w) sedition;
- (x) theft and shoplifting;
- (y) treason;
- (z) trespass;
- (aa) any sexual offence referred to in sections 12, 13 or 14 of the Criminal Law (Sexual Offences And Related Matters) Amendment Act, 2007 (Act No. 32 of 2007); and
- (bb) any attempt to commit any of the offences in this regulation.

(5) Legal aid may be refused for—

- (a) criminal defamation;
- (b) public indecency; and
- (c) contempt of court:

Provided that Legal Aid South Africa has a general discretion to grant legal aid in these cases where—

- (i) resources permit; and
- (ii) Legal Aid South Africa is convinced that the accused person will experience substantial injustice if not legally represented.

(6) A legal aid applicant who is charged in the district magistrate's court for any statutory offence relating to the following matters may be granted legal aid:

- (a) Administration of justice;
- (b) animal and nature conservation;
- (c) children;
- (d) corruption;
- (e) counterfeiting currency;
- (f) dealing in unwrought precious metals or uncut gemstones;
- (g) escaping from custody or obstructing the police;
- (h) persons with mental disabilities;
- (i) squatting;
- (j) vehicle theft;
- (k) witchcraft; and
- (l) any attempt to commit an offence referred to in this regulation.

(7) Legal Aid South Africa, in assessing an application by a legal aid applicant who is charged in the district magistrate's court with an offence that is not listed in subregulations (3), (4), (5) or (6), may grant legal aid to the legal aid applicant, after consideration of the following factors:

- (a) the complexity of the case in law and in fact, including the imposing of an appropriate sentence;
- (b) the legal aid applicant's ability to represent himself or herself, and
- (c) the gravity of the case, taking into account the nature of the charge against the accused and the possible consequences to him or her if convicted.

(8) Legal Aid South Africa must be satisfied on a balance of probabilities that there is a good prospect of success before legal aid is granted in the following kinds of cases:

- (a) bail appeals;
- (b) reviews;
- (c) interlocutory applications to a court that is not the trial court;
- (d) condonation applications; and
- (e) applications to lead further evidence.

(9) A legal aid applicant may not receive legal aid for a criminal case if he or she is entitled to legal representation at the expense of the state attorney or a government department.

(10) An alleged offender against whom an application in terms of section 31 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), is brought may receive legal aid for legal representation at such hearing.

(11) Where the alleged offender referred to in subregulation (10) is receiving legal aid for the trial, the legal aid instruction includes legal representation at the hearing referred to in subregulation (10).

(12) Where the alleged offender referred to in subregulation (10) has not yet been charged or is not already receiving legal aid for the trial, he or she must apply for legal aid for the appointment of a legal representative to appear on his or her behalf at the hearing of the application referred to in subregulation (10).

(13) A child is entitled to legal representation at a preliminary enquiry contemplated in the Child Justice Act, 2008 (Act No. 75 of 2008).

(14) Legal Aid South Africa may not refuse to grant legal aid to a child who is charged for an offence in a child justice court contemplated in the Child Justice Act, 2008.

### **Witnesses**

4. A witness who appears before a court and who has been warned by the court to provide incriminating evidence against himself or herself may be granted legal aid.

### **Extradition**

5. Any person arrested in terms of the Extradition Act, 1962 (Act No. 67 of 1962) may be granted legal aid.

### **Criminal appeals**

6. (1) Legal aid may be provided for an intended criminal appeal if—

- (a) the convicted person is unable to afford the cost of his or her own legal representation for an application for leave to appeal, a petition for leave to appeal, or for the appeal;
- (b) the convicted person has been sentenced to imprisonment with an unsuspended portion of more than three months, and if given the option of a fine, that fine is unpaid for two weeks after the date of sentence;
- (c) an application for leave to appeal has been made in time or a within a period of less than one year since the date of sentence; or
- (d) the convicted person has not been given the right to an appeal or review by a higher court.

(2) The provision of legal aid to a convicted person contemplated in subregulation (1) is limited to—

- (a) an application for leave to appeal to the trial court that sentenced the convicted person;
- (b) an application for leave to appeal, or a petition for leave to appeal, to a higher court if leave to appeal is refused by the trial court; and
- (c) an appeal, if leave to appeal is granted as contemplated in paragraph (a) or (b), or when the convicted person has an automatic right of appeal.

(3) Legal aid for any other appeal may only be granted if Legal Aid South Africa is of the opinion that there are good prospects of success in further proceeding with an appeal.

(4) If a convicted person applies for legal aid for—

- (a) an application for leave to appeal;
  - (b) a petition for leave to appeal; or
  - (c) for a condonation application for an appeal that is out of time,
- legal aid may be granted for both the application for leave to appeal and the condonation application, or for the appeal itself, subject to the provisions of subregulations (1)(c), (2) and (3).

(5) If a convicted person has received legal aid for the trial he or she does not have to re-apply for legal aid for an appeal, once leave to appeal has been granted.

(6) If a convicted person has not received legal aid for the trial he or she must apply for legal aid for an application or a petition for leave to appeal.

### **Bail applications**

7. Legal aid may only be granted for one bail application for an accused in a particular case: Provided that Legal Aid South Africa may approve legal aid for a further application if it is satisfied that there are changed circumstances that justify a further bail application.

### **Court orders**

8. An accused who does not qualify for legal aid in terms of these regulations, will not receive legal aid unless this is directed by a court order in terms of section 22 of the Act.

### **Civil matters**

9. (1) Legal Aid South Africa may grant legal aid to a litigant in any civil matter if—

- (a) in the opinion of Legal Aid South Africa, the matter has good prospects of success;
- (b) in the opinion of Legal Aid South Africa, the matter has good prospects of enforcement of a court order; and
- (c) Legal Aid South Africa has the necessary resources available, based on a written merit report, where such report is applicable.

(2) Legal Aid South Africa may, subject to subregulation (1), provide legal aid for the purpose of compiling a merit report, before any steps are taken, except where steps are necessary to prevent prescription, default judgment or lapsing of the litigants' rights.

(3) A merit report for a civil matter is not required in respect of the following matters:

- (a) Divorces;
- (b) eviction cases, where assistance can be granted to negotiate with the owner of the property concerned to allow the legal aid recipient to stay on the property for a period of time;
- (c) domestic violence matters to protect the best interests of a child;
- (e) the administration of estates; and
- (f) maintenance.

(4) When legal aid has been granted to a person for a case in a court of the Republic and evidence is to be heard on commission outside of the Republic, Legal Aid South Africa may grant legal aid for attendance by one or more legal practitioners if—

- (a) Legal Aid South Africa has sufficient funds available, and
- (b) Legal Aid South Africa is of the opinion that good reasons exist.

(5) Legal Aid South Africa may not provide legal aid for litigation in any foreign court.

### **Civil cases for protection of constitutional rights**

10. (1) Subject to the provisions of these regulations and availability of resources, legal aid may be provided to progressively implement section 7 of the Constitution.

(2) In deciding whether a person may receive legal aid for a civil case as contemplated in subregulation (1), Legal Aid South Africa must consider the following criteria:

- (a) The seriousness of the implications for the legal aid applicant;
- (b) the complexity of the relevant law and procedure;
- (c) the ability of the legal aid applicant to represent himself or herself effectively without a lawyer;
- (d) the financial means of the legal aid applicant;
- (e) the legal aid applicant's chances of success in the case;
- (f) whether the legal aid applicant has a substantial disadvantage compared to the other party in the case; and
- (g) whether the other requirements of these regulations are met.

### **Limitation and exclusion of civil legal aid**

**11.** (1) Legal aid may not be granted for a case where, in the opinion of Legal Aid South Africa, there is no substantial and identifiable material benefit to the legal aid applicant: Provided that this regulation does not apply to litigation in an equality court contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and to impact legal services.

(2) Legal aid may not be granted for the following types of cases:

- (a) A financial enquiry in terms of section 65 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944);
- (b) an administration order in terms of section 74 of Magistrates' Courts Act, 1944;
- (c) the administration of an estate, subject to the provisions of regulation 23;
- (d) the voluntary surrender or sequestration of an estate;
- (e) the liquidation of a legal person;
- (f) an application for the rehabilitation of an unrehabilitated insolvent;
- (g) debt review; and
- (h) an action claiming damages on the grounds of —
  - (i) defamation;
  - (ii) infringement of dignity, excluding infringement as a result of adultery; and
  - (iii) infringement of privacy:

Provided that legal aid may be granted to defend these kinds of actions.

(3) Subject to the provisions of regulation 23(8), legal aid may not be granted for any action that can be brought in a small claims court in terms of the Small Claims Courts Act, 1984 (Act No. 61 of 1984): Provided that Legal Aid South Africa may grant legal aid for a claim that does not exceed the monetary jurisdiction of the small claims court by more than 50 percent.

(4) Legal aid may not be granted for instituting or defending an action in a burial dispute: Provided that legal aid may be granted when a burial dispute can be resolved through alternative dispute resolution.

(5) Legal aid may not be granted for the purpose of giving security: Provided that in matters where the sheriff requires security or an indemnity to effect a writ and where that request is in accordance with the rules of court and can be substantiated by the sheriff, Legal Aid South Africa may provide the necessary indemnity to a sheriff.

- (6) Legal aid may not be granted for a claim —
- (a) that has prescribed; or
  - (b) is unlikely to be acted on within the time left before prescription; and
  - (c) condonation is unlikely to be obtained.

(7) Legal aid may not be granted for any notarial or conveyancing matters save that, in matters involving children, conveyancing matters for children may be done through pro bono assistance.

(8) Legal aid may be granted for a non-litigious matter, including arbitration or mediation.

(9) Legal aid may not be granted for a civil matter where the legal aid applicant is entitled to legal representation at the expense of the state attorney or a government department.

(10) Legal aid may not be granted for the bringing of a claim against the Road Accident Fund, established by the Road Accident Fund Act, 1996 (Act No. 56 of 1996), or any other personal injury claim, subject to the provisions of regulation 23.

(11) Legal Aid may not be granted for a hearing before an administrative tribunal: Provided that legal aid may be granted to review a decision of an administrative tribunal.

(12) A legal aid applicant may only receive legal aid for one civil matter at a time, unless Legal Aid South Africa approves that legal aid may be granted for more than one matter, if it satisfied that—

- (a) there is a good prospect that the cases will succeed; and
- (b) the cost of the cases will be justified by the benefit to the legal aid applicant.

### **Civil appeals**

**12.** Legal aid may only be granted for a civil appeal if Legal Aid South Africa is satisfied that—

- (a) there is a good prospect that the appeal will succeed; and
- (b) the cost of the appeal will be justified by the benefit obtained to the legal aid applicant.

### **Maintenance, domestic violence and harassment cases**

**13.** (1) In a maintenance case in terms of the Maintenance Act, 1998 (Act No. 99 of 1998), a domestic violence case in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), or a matter brought in terms of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), Legal Aid South Africa may grant legal aid to a legal aid applicant for an initial consultation to advise him or her on his or her rights, the procedure he or she can follow and his or her prospect of success: Provided that legal aid may be granted to a person over 60 years of age in a domestic violence matter where it is required to protect that person.

(2) Legal aid may be granted for legal representation in a court hearing for the matters referred to in subregulation (1), if—

- (a) in the opinion of Legal Aid South Africa, the legal aid applicant's claim or defence has a good prospect of success; and

(b) the opposing party is represented by a legal practitioner or is a legal practitioner.

- (3) Legal aid may be granted for legal representation in a maintenance matter if—
- (a) the legal aid applicant has been unable to seek or execute a maintenance order for a period of longer than 12 months, due to a failure by the system; or
- (b) there is an abuse of the court system.

#### **Labour cases**

- 14.** (1) Legal Aid South Africa may grant legal aid for—
- (a) legal representation in the Labour and Labour Appeal Courts;
- (b) assistance to farm workers in exercising their rights under the Labour Relations Act, 1995 (Act No. 66 of 1995), as provided for in section 8(3) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997); and
- (c) assistance to enforce an award by the Commission for Conciliation, Mediation and Arbitration established in terms of the Labour Relations Act, 1995, except where there is no prospect of recovery.

(2) Legal Aid South Africa may not grant legal aid for legal representation at conciliation and arbitration proceedings in the Commission for Conciliation, Mediation and Arbitration or bargaining councils established in terms of the Labour Relations Act, 1995.

#### **Divorce and family law cases**

- 15.** (1) If legal aid is granted for the bringing of a divorce action, the action must be instituted in the court for a regional division established in terms of the Magistrates' Courts Act, 1944: Provided that Legal Aid South Africa may grant approval for the institution of the action in another court, after taking the following factors into consideration:
- (a) Cost effectiveness;
- (b) logistical factors, including the legal aid applicant's distance from the court; and
- (c) the interests of the legal aid applicant.

- (2) Legal Aid South Africa may not grant legal aid for the following matters:
- (a) A divorce appeal;
- (b) a divorce action if Legal Aid South Africa is satisfied that there is no prospect of the legal aid recipient succeeding in his or her action; and
- (c) a divorce action if the legal aid applicant married a foreigner to enable that foreigner to obtain South African citizenship.

- (3) Legal aid may only be granted in order to vary or enforce a divorce order if—
- (a) the issue in dispute deals with the care of children or contact with children;
- (b) the application is supported by a report of a social worker or a Family Advocate; and
- (c) the opposing party refuses, fails or neglects to give effect to the terms of the court order or deed of settlement.

(4) Legal aid may be granted to vary or amend a divorce order so as to include an order for the payment of the pension fund interest by the pension fund or to ensure the correct description of the relevant pension fund in the court order.

(5) After the issuing of a divorce summons Legal Aid South Africa may apply to the court for an order that the opposing party may make a contribution towards the legal aid applicant's costs: Provided that this application must not be brought if the cost of the application will be more than the amount of the contribution.

#### **Legal aid for specialist or expert advice**

16. Legal Aid South Africa may grant legal aid for the obtaining of a specialist or expert opinion.

#### **Land rights**

17. (1) Legal Aid South Africa may grant legal aid for cases under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) if the Land Claims Commissioner —

- (a) makes funds available to Legal Aid South Africa to fund the matter; or
- (b) is the opposing party to the litigation or possible litigation.

(2) Legal aid may not be granted for the claim lodgement and investigation under the Restitution of Land Rights Act, 1994.

#### **Cases relating to the Land Reform (Labour Tenants) Act, 1996, the Extension of Security of Tenure Act, 1997 and Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998**

18. (1) Legal aid may be granted to persons affected by the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) and the Prevention of Illegal Occupation and Eviction from Land Act, 1998 (Act No. 19 of 1998): Provided that the granting of legal aid in terms of this regulation is subject to the making available of funds by the relevant government department.

(2) Legal aid may be granted to to a defendant or respondent who is an occupier as contemplated in the Acts referred to in subregulation (1), if Legal Aid South Africa is satisfied that he, she or his or her family members are threatened with eviction.

(3) In matters referred to in subregulation (1), where litigation has already started, Legal Aid South Africa may grant legal aid for mediation, arbitration or other alternative dispute resolution procedure, if Legal Aid South Africa is satisfied that these methods are likely to—

- (a) eliminate or shorten litigation; or
- (b) reduce the fees and disbursements that would otherwise be payable by Legal Aid South Africa.

#### **Asylum seekers**

19. (1) Legal aid may be granted to a legal aid applicant who seeks asylum in the Republic or who intends to apply for asylum under Chapter 3 or 4 of the Refugees Act, 1998 (Act No. 130 of 1998).

(2) It is not necessary for a legal aid applicant referred to in subregulation (1) to be physically resident in the Republic: Provided that he or she must be physically present in the Republic at the date that he or she applies for legal aid.

#### **Hague Convention cases**

20. Legal aid may be granted for Hague Convention cases: Provided that it is not necessary for the legal aid applicant to be physically resident in the Republic.

#### **Equality court cases**

21. Legal aid may be granted for matters governed by the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000).

#### **Civil matters involving children**

22. (1) Legal aid may be granted to a child who may suffer substantial injustice in a civil case, after consideration of the following factors:

- (a) The seriousness of the implications for the child of the issue and whether the child's constitutional rights or personal rights are at risk;
- (b) the complexity of the relevant law and procedure;
- (c) the financial situation of the child or the child's parents or guardian; and
- (d) the child's chances of success in the case.

(2) Where a child is the respondent or defendant in a civil matter, the merits of the civil matter are irrelevant and a child may be granted legal aid.

(3) If a child applies for legal aid to bring civil proceedings, Legal Aid South Africa must consider the merits of the case and the child's prospects of success.

(4) The means test is applied when the legal aid applicant is a child, subject to the following provisions:

- (a) If the child is not assisted by his or her parent or guardian, the child's means are taken into account;
- (b) if the child is assisted by his or her parent or guardian, the parent or guardian's means are taken into account; or
- (c) if the child is assisted by his or her parent or guardian, who exceeds the means test and can afford to provide legal representation for the child, yet fails, refuses or neglects to do so, legal aid may be provided to the child: Provided that Legal Aid South Africa may institute proceedings against that parent or guardian to recover the cost of the legal aid.

#### **Other legislation requiring legal representation for children**

23. (1) Legal aid may be granted to a child for legal representation to intervene in divorce, care or maintenance proceedings between the parents of the child if—

- (a) it is necessary to protect the best interests of a child; and
- (b) if substantial injustice would otherwise result.

(2) Legal aid may be granted to a child for the administration of an estate where it is required to protect the best interests of a child.

(3) Legal aid as contemplated in subregulation (2) may only be granted where the value of the estate does not exceed the amount determined by the Minister responsible for the administration of justice in terms of section 18(3) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), except where there is immovable property in that estate of which the value exceeds the amount determined in terms of section 18(3) but is valued at less than R500 000.

- (4) Legal aid may be granted to a child to institute a —
- (a) claim against the Road Accident Fund, established by the Road Accident Fund Act, 1996 (Act No. 56 of 1996); and
  - (b) to institute a personal injury claim.

(5) Legal aid may be granted to a child in a domestic violence matter where it is required to protect the best interests of that child and if substantial injustice would otherwise result.

(6) Legal aid may be granted to an unaccompanied foreign child as contemplated in the Refugees Act, 1998, where it is required to protect the best interests of that child and if substantial injustice would otherwise result.

(7) Legal aid may be granted to a child in a matter brought in terms of the Protection from Harassment Act, 2011, where it is required to protect the best interests of that child and if substantial injustice would otherwise result.

(8) Legal aid may be granted to a child for a money claim that exceeds the small claims court monetary jurisdiction by more than 50 percent, where it is required to protect the best interests of that child and if substantial injustice would otherwise result.

(9) Legal aid may be granted to a child if it is required for the appointment of a curator *ad litem* or a curator *bonis*.

#### **Types of Children's Act matters where legal representation can be ordered in terms of section 55 of the Children's Act**

24. (1) Legal aid may be granted to a child to obtain legal representation to ensure that a parental responsibilities and rights agreement, as contemplated in section 22 of the Children's Act, is in the best interests of that child.

(2) Legal aid may be granted to any person who has an interest in the care, well-being or development of a child to apply to the High Court, a regional court or to the children's court, as the case may be, for an order granting the legal aid applicant contact with that child or for the care of that child, as contemplated in section 23 of the Children's Act.

(3) Legal aid may be granted to any person who has an interest in the care, well-being and development of a child to apply to the High Court for an order granting guardianship of that child to the legal aid applicant, as contemplated in section 24 of the Children's Act.

(4) Legal aid may be granted to any male person who is not married to the mother of a child, and who is, or claims to be, the biological father of that child, to apply to a court for an order for confirmation of his paternity of that child if the child's mother—

- (a) refuses to consent to an amendment to be effected to the registration of birth of the child;
- (b) is incompetent to give such consent;
- (c) cannot be located; or
- (d) is deceased,

as contemplated in section 26 of the Children's Act.

(5) Legal aid may be granted to any person to apply to the High Court, a regional court or a children's court, as the case may be, for an order —

- (a) suspending for a period;
- (b) terminating;
- (c) extending; or
- (d) limiting,

any or all of the parental responsibilities and rights which a specific person has in relation to a child, as well as, if appropriate, an application for the assignment of contact and care over that child to the legal aid applicant, as contemplated in sections 23 and 28 of the Children's Act.

(6) Legal aid may be granted to any person to apply to the court for the adoption of a child, as contemplated in the Children's Act.

(7) Legal aid may be granted to any child to obtain a legal representative to represent that child in all applications under the Hague Convention, if the requirements of section 55 of the Children's Act are met.

### **Matters relating to the Mental Health Care Act, 2002**

**25.** (1) Legal aid is available to mental health care users and the means test is applied when the legal aid applicant is a mental health care user as contemplated in section 15 of the Mental Health Care Act, 2002 (Act No. 17 of 2002), subject to the provisions of subregulation (2).

(2) If—

- (a) the mental health care user is not assisted by his or her parent, guardian, spouse, life partner or child, the means of the mental health care user must be taken into consideration;
- (b) the mental health care user is assisted by his or her parent or guardian, spouse, life partner or child, the means of that parent, guardian, spouse, life partner or child must be taken into consideration; or
- (c) the mental health care user is assisted by his or her parent, guardian, spouse, life partner or child who exceeds the means test and can afford to provide legal representation for the mental health care user, yet fails, refuses or neglects to do so, legal aid must be provided to that mental health care user: Provided that Legal Aid South Africa may institute proceedings against that parent, guardian, spouse, life partner or child to recover the cost of the legal aid.

### **Commissions of Inquiry**

**26.** Where funds are made available for legal aid by the establishing authority of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947), legal aid may be provided for legal representation for a person appearing before a commission where that commission has certified that that person has standing before that commission.

### **Qualifying for legal aid and means test**

**27.** (1) In order to qualify for legal aid in either civil or criminal cases, the legal aid applicant's gross monthly income less tax and net assets must fall within the parameters set by the means test contemplated in subregulations (2), (3), (4), (5) and (6) before legal aid may be granted.

(2) An applicant who applies for legal aid for a criminal case and has a net monthly income, after deduction of income tax, of R5 500 a month, or less, may qualify for legal aid in that criminal case irrespective of whether the applicant has a spouse or is a member of a household.

(3) An applicant who applies for legal aid for a civil case and who does not have a spouse or is not a member of a household and has a net monthly income, after deduction of income tax, of R5 500 a month, or less, may qualify for legal aid for that civil matter.

(4) An applicant who applies for legal aid for a civil case and who has a spouse or the applicant is a member of a household and whose household has a monthly income, after deduction of income tax, of R6 000 a month or less, may qualify for legal aid for that civil matter.

(5) A legal aid applicant or an applicant who is a member of a household who does not own immovable property and has net movable assets of less than R100 000 in value may qualify for legal aid for a civil or criminal matter.

(6) A legal aid applicant or an applicant who is a member of a household who owns immovable property and has net immovable assets and movable assets in value of up to R500 000, may qualify for legal aid for a civil or criminal matter: Provided that the legal aid applicant or the member of a household must physically reside in the immovable property or in at least one of the immovable properties, where there is more than one, unless Legal Aid South Africa decides to the contrary.

#### **Amounts included or excluded for legal aid qualification**

**28.** (1) A grant paid by the South African Social Security Agency is not taken into account in the calculation of income for purposes of the means test.

(2) Spousal maintenance or child support received by a legal aid applicant is taken into account in the calculation of income for purposes of the amounts.

(3) If any asset is owned by a trust, company or other legal personality but is controlled, either directly or indirectly, by the legal aid applicant or his or her spouse, dependent, sibling, parent, descendant or nominee, for the direct or indirect benefit of the legal aid applicant or his or her spouse, dependent, sibling, parent, descendant or nominee, that asset will be deemed to be owned by the legal aid applicant for the purposes of determining whether the legal aid applicant qualifies for legal aid in terms of the means test: Provided that where there are beneficiaries other than the legal aid applicant or his or her spouse, dependent, sibling, parent, descendant or nominee, the applicant is deemed to be the owner of his or her percentage share of that assets.

(4) Where a legal aid applicant applies for legal aid for litigation or possible litigation between him or her and his or her spouse, the legal aid applicant's means test must be assessed as if he or she does not have a spouse.

(5) A legal aid applicant must provide documentary proof and a written disclosure of assets for purposes of the means test, where requested.

(6) A legal aid applicant must provide proof that he or she is a natural person who is indigent as set out in these regulations.

(7) Legal Aid South Africa may conduct a forensic investigation of the financial circumstances of the applicant or recipient before legal aid is granted or after legal aid has been granted by itself or through a service provider.

#### **No right to choose legal practitioner**

**29.** No legal aid applicant has the right to choose the legal practitioner who will be instructed to represent him or her.

#### **Exceeding the means test and discretion**

**30.** (1) Legal Aid South Africa has the discretion to authorize fully subsidized legal aid for any applicant who exceeds the means test by up to R3 000 a month in respect of gross income for all matters and R100 000 in respect of net assets for all matters.

(2) Legal Aid South Africa may consider the application of any person who does not qualify for legal aid in terms of the means test under regulation 27(1) and (2), but who subjectively judged, is indigent and deserves sympathetic consideration on the grounds of exceptional or other circumstances: Provided such application otherwise qualifies for legal aid in terms of regulations 3(1) and 10(1).

#### **Partially subsidized legal aid**

**31.** (1) If a legal aid applicant does not qualify for legal aid in terms of the means test for a criminal matter, Legal Aid South Africa may provide partial legal aid and require from the legal aid applicant to contribute to the cost of the legal aid.

(2) In assessing whether partial legal aid should be provided Legal Aid South Africa must take the following factors into account:

- (a) Whether the applicant will suffer substantial injustice if legal aid is not provided;
- (b) whether the legal aid applicant will be able to afford the cost of his or her own legal representation; and
- (c) whether the applicant can adjust his or her standard of living to be able to afford the cost of his or her own legal representation.

#### **Contributions by legal aid recipient**

**32.** (1) If partial legal aid is provided as contemplated in regulation 31(1), the contribution amounts as set out in the Manual must be paid to Legal Aid South Africa monthly in advance until—

- (a) the cost recovery amount is paid in full;
- (b) cessation of the trial; or
- (c) the accused is convicted and sentenced to direct imprisonment, whereafter no further payment will become due and payable.

(2) If a legal aid recipient's circumstances change subsequent to the granting of partial legal aid as contemplated in regulation 31(1), Legal Aid South Africa may amend the contribution amount.

(3) If the legal aid recipient fails to pay any contribution as determined by Legal Aid South Africa, legal aid may be terminated.

(4) Where a court in accordance with section 22(1) of the Act orders/directs the provision of legal aid and the legal aid applicant exceeds the parameters of the means test, that court order must provide for a contribution in accordance with this regulation.

### **Termination of legal aid**

**33.** (1) Legal Aid South Africa may terminate a legal aid recipient's legal aid on account of the conduct of the legal aid recipient, which may include that the legal aid recipient —

- (a) ceases to qualify under the means test;
- (b) fails to appear in court timeously on the appointed day without giving a good reason for not appearing and a warrant for arrest has been issued;
- (c) unreasonably refuses to accept a settlement;
- (d) does not timeously comply with a contribution order as contemplated in regulation 32;
- (e) terminates the mandate of the instructed legal practitioner unreasonably and without good reason; or
- (f) makes it impossible for the instructed legal practitioner to carry out his or her mandate.

(2) If legal aid is terminated Legal Aid South Africa may instruct a further legal practitioner after consideration of the facts of the case.

(3) Legal aid may be terminated where the instructed legal practitioner withdraws or has his or her mandate terminated by Legal Aid South Africa for reasons that may include the following:

- (a) Ethical reasons;
- (b) the legal practitioner ceases to practise;
- (c) the legal practitioner ceases to be a Legal Aid South Africa accredited legal aid practitioner;
- (d) the legal practitioner is unable to continue to act because of ill-health or another cause that makes it impossible to carry out his or her obligations as a practitioner; or
- (e) the legal practitioner fails to proceed with the matter.

(4) Where a legal practitioner's mandate is terminated as contemplated in subregulation (3), Legal Aid South Africa may appoint another legal practitioner if the legal aid recipient continues to comply with the provisions of these regulations.

(5) Legal Aid South Africa may terminate a legal aid recipient's legal aid for reasons that may include the following:

- (a) A change in policy on the type of matters for which legal aid is available;
- (b) the suspension of legal aid in certain types of matters as a result of a lack of resources; or
- (c) the legal aid recipient gives just cause for the termination of the practitioner's mandate.

(6) Where Legal Aid South Africa terminates a recipient's legal aid because of Legal Aid South Africa's policies or resources, it must ensure that the legal aid recipient does not suffer any prejudice as a result of the termination.

(7) In a civil legal aid case Legal Aid South Africa must withdraw legal aid if one or more of the following situations have arisen:

- (a) The applicant's problem is trivial or is without sufficient grounds and is only instituted to cause annoyance;
- (b) the circumstances suggest that no real or substantial benefit will be achieved by the rendering of legal aid;
- (c) the legal costs involved would be out of proportion to the relief that the legal aid applicant wishes to get; or
- (d) considering all the circumstances of the case, legal aid should not have been granted for financial or other reasons.

### **Refusal of legal aid**

**34.** (1) When an application for legal aid has been refused the legal aid applicant has the right of appeal according to processes as determined in the Manual.

(2) Legal Aid South Africa must inform the legal aid applicant in a criminal matter of his or her right to apply to the court for an order that he or she must be provided with legal representation at State expense and that, before that order is considered, the court will refer the issue for evaluation and report by Legal Aid South Africa under section 22 of the Act.

### **Impact legal services**

**35.** (1) Legal Aid South Africa may undertake or fund litigation or other legal work which has the potential to positively affect the lives of a larger number of indigent persons other than the person or persons to whom legal services are rendered directly, which matter—

- (a) may establish a legal precedent, jurisprudence or clarify aspects of the law that will be followed in dealing with indigent persons in similar matters;
- (b) may have the potential of resolving a large number of disputes or potential disputes, and obtain wider collective objectives; or
- (c) may improve the lives of a group of persons or a sizeable portion of a group.

(2) In a case contemplated in subregulation (1) legal aid may be granted to a legal entity acting on behalf of a large number of natural persons or in the furtherance of public interest in accordance with section 38 of the Constitution.

(3) If legal aid is refused for the matter as contemplated in subregulation (1), Legal Aid South Africa must inform that legal aid applicant that he or she has the right of appeal.

### **Medical and travelling costs**

**36.** Legal Aid South Africa does not pay costs related to a legal aid applicant's—

- (a) medical treatment, operations or hospitalisation; or
- (b) travel expenses for attending a medical consultation or examination.

### **Receipt of monies after legal aid instruction**

**37.** No additional moneys that are not due in terms of these regulations, the Manual or a court order, may be received directly or indirectly by a legal practitioner from the legal aid recipient, or from any other source, after receiving a legal aid instruction for a particular matter.

#### **Payment of financial benefit to Legal Aid South Africa**

**38.** When a litigant who receives legal aid from Legal Aid South Africa obtains a financial benefit as a result of a settlement or judgement at any stage after legal aid was granted, a percentage of the financial benefit is payable to Legal Aid South Africa, as determined in the Manual.

#### **Transitional provision**

**39.** Any legal aid instruction that was issued before the coming into operation of these regulations must be dealt with in terms of these regulations.

#### **Commencement**

**40.** These regulations come into operation on 22 August 2017.

### **LEFAPHA LA TOKA LE NTSHETSOPELE YA MOLAO THEO**

**Palo. R.**

**2017**

#### **THUSO YA MOLAO AFRIKA BORWA, 2014 (MOLAO 39 WA 2014): MELAO**

Letona la Toka le Ditshebeletso tsa Tlhabollo ya batshwaruwa le entse melao Shejuleng ka tlasa karolo 23(1) ya Thuso ya Molao Afrika Borwa, 2014 (Molao 39 wa 2014), ka mora ho fumana dikgothaletso tsa Balaodi ba Lekgotla..

#### **SHEJULE TLHOPHISO YA MELAO**

1. Ditlhaloso
2. Pholisi kakaretso
3. Dintlha tsa tlolo ya molao
4. Dipaki
5. Nehelano
6. Boipiletso tlolong ya molao
7. Dikopo tsa beili
8. Taelo ya lekgotla
9. Dinyewe tsa baahi
10. Dinyewe tsa baahi bakeng la ho sireletsa ditokelo tsa molaotheo
11. Moedi le ho sekenyeletswe ha thuso ya molao ya baahi
12. Boipiletso ba baahi
13. Tlhokomelo, dikgoka tsa ka lapeng le dinyewe tsa tlhekefetso
14. Dinyewe tsa basebetsi
15. Tlhalano le dinyewe tsa molao wa lelapa
16. Thuso ya molao bakeng la ditsebi
17. Ditokelo tsa lefatshe
18. Dinyewe tse amanang le *Land Reform (Labour Tenants) Act, 1996, Extension of Security of Tenure Act, 1997* le *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1988*

19. Bahlokang botshabelo
20. Dinyewe tsa Tumellano ya Hague
21. Dinyewe tsa Lekgotla la Dinyewe la Tekatekano
22. Dinyewe tsa baahi tse akgang bana
23. Molao o mong o hlokang kemedi ya molao bakeng la bana
24. Mefuta ya Molao wa Bana e bohlokwa moo kemedi ya molao e ka laelwa ho latela karolo 55 ya Molao wa Bana
25. Dintlha tse amanang le *Mental Health Care Act, 2002*
26. Khomishene ya Dipatlisiso
27. Ho ka fumantshwa thuso ya molao le teko ya bokgoni
28. Palo e kenyeleditsweng kapa e ntshitsweng bakeng la ho ka thuswa ka molao
29. Ha ho tokelo ya ho kgetha kemedi ya molao
30. Ho feta teko ya bokgoni le kgetho
31. Thuso e sa fellang ya molao
32. Seabo ka moamohedi wa thuso ya molao
33. Phediso ya thuso ya molao
34. Kgano ya thuso ya molao
35. Sekgahla sa ditshebeletso tsa molao
36. Ditjeho tsa bongaka, maeto le paki
37. Kamohelo ya ditjhelete ka mora taelo ya thuso ya molao
38. Dikuno tsa tefello ya tjhelete ho Thuso ya Molao Afrika Borwa
39. Nehelano ya tsamaiso

## Ditlhaloso

1. Melaong ena lentswe kapa polelo e nngwe le e nngwe e nehetsweng moelelo ka hare ho Molao e tla ba le moelelo oo e o nehetsweng ntle le ha sengolwa se hlalosa ka tsela e nngwe—

“**matlotlo**” e akga—

- (a) thepa e tsamayang le e sa suthing;
- (b) Ditokelo tsa thepa e tshwarehang kapa ya boiqapelo; le
- (c) ntho, thepa kapa tjhelete eo mokopi wa thuso ya molao a e fumaneng, kapa a tla e fumana nakong e tlang ho tswa thepeng ya mofu: Ha feela nehelano e sebetsa e bang—
  - (i) ha ho akhaonto ya phatlalatso ya thepa ya mofu e seng e entsweng;
  - (ii) mokopi wa thuso ya molao kapa molekane wa hae a so nke phithiso kapa a fumane ho hong, thepa kapa tjhelete; kapa
  - (iii) ntho, thepa kapa tjhelete e tshwerweng ka lebitso la thepa ya mofu kapa ka lebitso la terasete jwalo ka ha ho hlalositse molaong 28(3);

“**ngwana**” e hlalosa motho ya ka tlase ho dilemo tse 18;

“**Molao wa Bana**” e hlalosa *Children's Act, 2005 (Act No. 38 of 2005)*;

“**Tumellano ya Hague**” e hlalosa Tumellano ya Hague ho Dintlha tsa Baahi Kwetelong ya Bana ya Matjhabatjhaba e tekennweng Hague ka la 25 Mphalane 1980 le ho kena tshebetsong mahareng a ba nka karolo ka la 1 Tshitswe 1983;

“**lelapa**” e hlalosa ditho tsa lelapa, balekane, bana le batswadi ba dulang mmoho bonyane nako ya masiu a mane ka beke mme ba arolelana dijo le disebediswa;

“**sekgahla sa ditshebeletso tsa molao**” e hlalosa tshebeletso ya molao ya tatofatsano kapa e senang tatofatsano jwalo ka ha ho hlalositse molaong 35;

“**mokopi wa thuso ya molao**” e hlalosa motho ya etsang kopo bakeng la thuso ya molao;

“**moamohedi wa thuso ya molao**” e hlalosa motho ya fumanang thuso ya molao;

“**Bukana**” e hlalosa Bukana ya Thuso ya Molao e hlaloswang karolong 24 ya Molao;

“teko ya bokgoni” e hlalosa teko ya Thuso ya Molao Afrika Borwa ya ho etsa qeto hore na mokopi wa thuso ya molao a ka fumantshwa thuso ya molao jwalo ka ha ho hlalositse molaong 27;

“tlaleho ya dintlha” e hlalosa tlaleho ka mosebeletsi wa molao e leng hlahlobo ya dintlha le molao tse amanang le nyewe ya mokopi ho ka hlwaya nehelano kapa tswelopele ya thuso ya molao ya baahi jwalo ka ho hlalositse molaong 9;

“lekeno la mokgolo ka mora lekgetho” e hlalosa lekeno ho tswa mohloping o mong le mong jwalo ka ha ho hlalositse molaong 27;

“Rephaboliki” e hlalosa Rephaboliki ya Afrika Borwa;

“molekane” e hlalosa—

- (a) molekane wa lenyalo ya nyetseng ho latela *Marriage Act, 1961 (Act No. 25 of 1961)*;
- (b) molekane wa lenyalo ya nyetseng ka lenyalo la setso jwalo ka ha ho hlalositse ho *Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998)*; kapa
- (c) molekane wa kutlwano ya bong bo le bong ya dikamanong ho latela *Civil Union Act, 2006 (Act No. 17 of 2006)*; le

“Molao” e hlalosa Molao wa Thuso ya Molao Afrika Borwa, 2014 (Molao 39 wa 2014).

### Pholisi kakaretso

2. (1) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao dinyeweng tsa tlolo ya molao ho motho e mong le e mong ya qoswang ka pele ho lekgotla la dinyewe la Afrika Borwa mme ho dumelleseha ho ka fumantshwa thuso ya molao ho latela melao ena.

(2) Thuso ya molao e fumaneha feela ho motho bakeng la keletso le bakeng la kemedi ya molao.

(3) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao ntlheng ya baahi ho—

- (a) ngwana ya dulang ka hare ho Rephaboliki; kapa
- (b) motho ya dumellesehang ho ka fumantshwa thuso ya molao ho latela melao ena, mme a—
  - (i) dula ka hare ho Rephaboliki; le
  - (ii) moahi wa Rephaboliki.

(4) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao maemo a ikgethileng e bang dintlha ka hare ho nyewe di ka rerisanwa lekgotleng la dinyewe la Rephaboliki, empa mokopi wa thuso ya molao e se motho ya dulang ka hare ho Rephaboliki.

(5) Tlhokeho ya hore motho o tshwanetse ho ba modudi wa Rephaboliki ha e sebetse ho dinyewe tse amanang le bakopang botshabelo le Tumellano ya Hague.

(6) dipatlisiso ka hore motho o teng kapa ha a yo ka hare ho Rephaboliki ke dipatlisiso tsa bonnete mme ditshwanetse ho etswa ke ba Thuso ya Molao Afrika Borwa ha mokopi wa thuso ya molao a etsa kopo bakeng la ho thuswa ka molao: Ha feela ho sa natse hore mokopi wa thuso ya molao o na le tokelo ya molao ho ba moahi wa ka hare ho Rephaboliki.

### Dintlha tsa tlolo ya molao

3. (1) Thuso ya Molao Afrika Borwa e ka nehela motho ya ahlotsweng kapa ya kwalletsweng kapa moqosuwa nyeweng ya tlolo ya molao e bang hona le kgonahalo ya hore motho eo a ka utlwiswa bohloko ke tlhokeho ya toka: Ha feela tlhokeho ya toka e ka etsahala e bang motho eo a sa kgone ho ka lefella kemedi ya molao le ha hona le kgonahallo ya hore a ka kwallwa.

(2) Mokopi wa Thuso ya Molao ya qoswang Lekgotleng le Phahameng la dinyewe la Afrika Borwa kapa lekgotleng la dinyewe la mmasetrata bakeng la karolo ya setereke a ka nehelwa thuso ya molao ka ntle le ho etswa dipatlisiso tsa mofuta le botebo ba qoso: Ha feela mokopi ya jwalo a sa kgone ho ka lefella ditefello tsa hae tsa kemedi ya molao tse tla moqhoba ho fihlella nyewe e fela.

(3) Mokopi wa thuso ya molao ya qoswang lekgotleng la dinyewe la maseterata la setereke bakeng la ditlolo tse latelang tsa molao a ka nehelwa thuso ya molao e bang lekgotla la maseterata la setereke le na le matla a e ketsehileng a semolao ho ka etsa qeto:

- (a) boshodu ba mohlape;
- (b) tlolo e nngwe le e nngwe e hlalosewang ka hare ho *Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992)*;
- (c) ho ba le kapa ho sebetsana le dithunya le mahlahlela ho seng molaong;
- (d) ho sebetsana le nnotahi o sena tumello;
- (e) ho kganna o tauwe;
- (f) ho kganna o le ka tlasa susumetso ya tahi kapa dithetefatsi;
- (g) ho palamisa sepalangwang ho feta tekano jwalo ka ha ho hlalositse ho *National Road Traffic Act, 1996 (Act No. 93 of 1996)*;
- (h) ho kganna ha bohlaswa; le
- (i) ho leka ho tlola molao ona.

(4) Mokopi wa thuso ya molao ya qoswang lekgotleng la dinyewe la setereke bakeng la molao o tlwaelehileng a ka nehelwa thuso ya molao:

- (a) Kwetela;
- (b) ho etsa tjhefo kapa disebediswa tse kotsi tse ka bolayang;
- (c) ho tjhesa;
- (d) ho otlala ka maikemisetso a ho ntsha kotsi;
- (e) Tlolo ya molao ya ho nyala motho e mong empa o nyetse e mong;
- (f) tjo-tjo;
- (g) Kakaretso;
- (h) polao ntle le maikemisetso;
- (i) ho sa natse kapa ho setisa toka ya molao;
- (j) phumantsho ya ho hong ka dikgoka le ditshoso;
- (k) ho tsietsa kapa ho qhekanyetsa ka puo;
- (l) thetso;
- (m) boshodu ba thepa ya ntlo;
- (n) dikamano tsa thobalano le wa leloko;
- (o) tlhekefetso ka thobalano;
- (p) ho kwetela;
- (q) tshenyho ya thepa ka bobae;
- (r) polao;
- (s) dikgoka setjhabeng;

- (f) peto;
- (u) ho fumantshwa thepa ya boshodu;
- (v) tlatlapo;
- (w) boferekanyi;
- (x) boshodi le ho utswa thepa ya lebenkele;
- (y) keko;
- (z) ho kena ntle le tumello;
- (aa) tlolo e nngwe le e nngwe ya molao ho tsa thobalano e hlahoswang karolong 12, 13 kapa 14 ya *Criminal Law (Sexual Offences And Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)*; le
- (bb) ho leka ho tlola molao ona.

(5) Thuso ya molao e ka hanelwa bakeng la—

- (a) tshenyo ya lebitso ka tlolo ya molao;
  - (b) tlontlollo setjhabeng; le
  - (c) nyediso ya lekgotla la dinyewe:
- Ha feela Thuso ya Molao Afrika Borwa e na le bohona ba ho ka nehelana ka thuso ya molao ka kakaretso dinyeweng tse tjena moo—
- (i) disebediswa di leng teng; mme
  - (ii) Thuso ya Molao Afrika Borwa ho bonahetse ho yona hore toka e keke ya nehelwa moqosuwa e bang a sa nehelwe moemedi wa molao.

(6) Mokopi wa thuso ya molao ya qoswang lekgotleng la dinyewe la setereke bakeng la tlolo ya molao o amanang le dintlha tse latelang a ka nehelwa thuso ya molao:

- (a) Tsamaiso ya toka;
- (b) diphoofolo le tlhokomelo ya tokoloho;
- (c) bana;
- (d) bosinyi;
- (e) tjhelete e seng molaong;
- (f) ho hweba ka mahakwe le majwe a so kang a sehwa;
- (g) ho baleha tjhankaneng kapa ho setisa maponesa;
- (h) batho ba nang le bofokodi ba kelello;
- (i) ho dula sebakeng ntle le molao;
- (j) boshodu ba sepalangwang;
- (k) boloi; le
- (l) ho leka ho tlola molao ona.

(7) Ka ho hlahloba kopo ya mokupi wa thuso ya molao ya qoswang lekgotleng la dinyewe la setereke ka qoso e sa hlahelleng lenaneng molawaneng (3), (4), (5) kapa (6), Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao ho mokopi ka mora ho nahanisisa dintlha tse latela:

- (a) ho thatafala ha nyewe ka molao le ka dintlha, ho kenyeletsa ho kenngwa tshebetsong ha kahlolo e lokileng;
- (b) bokgoni ba ho ikemela ba mokopi wa thuso ya molao, le
- (c) botebo ba nyewe ho shebuswe mofuta wa qoso kgahlano le moqosuwa le ditlamorao tse kabang teng ho yena e bang a fumanwa molato.

(8) Thuso ya Molao Afrika Borwa e tshwanetse ho kgotsofala ka kgonahalo ya katleho pele thuso ya molao e ka nehelwa dinyeweng tse latelang:

- (a) boipiletso ba beili;
- (b) tjhebisiso botjha;
- (c) dikopo tse etswang lekgotleng la dinyewe leo nyewe e sa sekasekweng ho lona;
- (d) dikopo tsa ho ekeletswa nako tsamaisong ya molao; le
- (e) kopo bakeng la ho tlisa bopaki bo bong.

(9) Mokopi wa thuso ya molao a ka se fumantshwe thuso ya molao bakeng la tlolo ya molao ka ditjeho tsa akgente ya mmuso kapa lefapha la mmuso.

(10) Eo ho thweng o tlotse molao eo tshebediso ya karolo 31 ya *Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007)*, e leng bakeng la hae a ka fumantshwa thuso ya molao bakeng la moemedi wa molao mamelong eo.

(11) Eo ho thweng o tlotse molao molawaneng (10) a fumane thuso ya molao bakeng la nyewe, taelo ya thuso ya molao e akga ka hare moemedi wa molao mamelong e hlahositsweng molawaneng (10).

(12) Moo eo ho thweng o tlotse molao ya hlahoswang molawaneng (10) a so qoswe kapa a so fumantshwe thuso ya molao bakeng la nyewe, o tshwanetse ho etsa kopo ya thuso ya molao bakeng la ho thonngwa ha moemedi wa molao ho ka hlahella boemong ba hae mamelong ya kopo e hlahositsweng molawaneng (10).

(13) Ngwana a ka fumantshwa moemedi wa molao qalehong ya dipatlisiso jwalo ka ha ho hlahositswe ho *Child Justice Act, 2008 (Act No. 75 of 2008)*.

(14) Thuso ya Molao Afrika Borwa e ka se hane ho nehelana ka thuso ya molao ho ngwana ya qoswang ka ho tlola molao lekgotleng la toka ya bana jwalo ka ha ho hlahositswe ho *Child Justice Act, 2008*.

#### Dipaki

4. Paki e hlahellang lekgotleng mme e kgalemetswe ke lekgotla bakeng la ho nehelana ka bopaki bo etsang a be molato a ka nehelwa thuso ya molao.

#### Nehelano

5. Motho e mong le e mong ya tshwerweng ho latela *Extradition Act, 1962 (Act No. 67 of 1962)* a ka nehelwa thuso ya molao.

#### Boipiletso ba batlola molao

6. (1) Thuso ya molao e ka nehelwa bakeng la boipiletso ba tlolo ya molao bo tla etswa e bang—

- (a) motho ya fumanweng a le molato ha kgone ho ka lefella ditjeho tsa hae tsa semolao bakeng la kopo ya tumello ho ka ipiletsa, phethishene ya kopo ya boipiletso kapa bakeng la boipiletso;
- (b) motho a fumanweng a le molato a ahlotswe ho ya hlola tjhankane ka karolo ya kotlo e sa fanyehwang ho feta dikgwedi tse tharo, le e bang a fuwe kgetho ya faene, faene eo ha e lefuwe bakeng la dibeke tse pedika mora letsatsi la kahlolo;
- (c) kopo ya tumello ho ka ipiletsa e entswe ka nako kapa nakong e ka tlase ho selemo ka mora letsatsi la kahlolo; kapa

(d) motho ya fumanweng a le molato ha so nehelwe tokelo ya ho ka ipiletsa kapa ho shebisiswa setjha ke lekgotla la dinyewe le phahameng.

(2) Nehelano ya thuso ya molao ho motho ya fumanweng a le molato e hlalositsweng molawaneng (1) e fihlella feela ho—

(a) kopo ya ho etsa boipiletso ho lekgotla le mametseng nyewe la ba la ahlola motho;

(b) kopo ya ho etsa boipiletso, kapa phethishene bakeng la ho etsa boipiletso lekgotleng le phahameng e bang kopo ya boipiletso e hanelwa ke lekgotla leo nyewe e mametsweng ho lona; le

(c) boipiletso, e bang kopo ya boipiletso e nehetswe jwalo ka ha ho hlalositse temaneng (a) kapa (b), kapa ha motho ya ahlotsweng a na le tokelo ya ho ka ipiletsa hanghang.

(3) Thuso ya molao bakeng la boipiletso bo bong le bo bong e ka nehelwa ha feela Thuso ya Molao Afrika Borwa e na le mohopolo wa hore hona le kgonahalo ya katleho tswelopeleng ya boipiletso.

(4) E bang motho a fumanweng a le molato a etsa kopo ya thuso ya molao bakeng la—

(a) kopo ya ho etsa boipiletso;

(b) phetheshene bakeng la kopo ya ho etsa boipiletso; kapa

(c) ho etsa kopo ho fellweng ke nako tsamaisong ya molao bakeng la boipiletso bo felletsweng ke nako, thuso ya molao e ka nehelwa bakeng la kopo bakeng la boipiletso le kopo e felletsweng ke nako tsamaiso ya molao, kapa boipiletso ka bo bona, ho latela molawana (1)(c), (2) le (3).

(5) E bang motho ya fumanweng a le molato a fumantshwe thuso ya molao bakeng la ho mamelwa ha nyewe kapa a ka nna a se etse kopo e nngwe bakeng la thuso ya molao bakeng la ho etsa boipiletso, hang ha kopo ya ho etsa boipiletso e nehetswe.

(6) Motho ya fumanweng a le molato a so fumantshwe thuso ya molao bakeng la ho mamelawa ha nyewe o tshwanetse ho etsa kopo bakeng la ho thuswa ka molao e le ho ka etsa kopo kapa phethishene bakeng la kopo ya boipiletso.

### **Dikopo tsa beili**

7. Thuso ya molao e ka nehelwa feela kopo e le nngwe ya beili ho moqosuwa nyeweng e itseng: ha feela Thuso ya Molao Afrika Borwa e ka dumela thuso ya molao bakeng la tswelopele ya kopoe bang e kgotsofetse hore maemo a fetohile a netefatsa kopo ya beili.

### **Ditaelo tsa lekgotla**

8. Moqosuwa ya sa dumelleseheng ho ka fumantshwa thuso ya molao ho latela melao ena, a ka se fumane thuso ya molao ntle le ha lekgotla la dinyewe le ka etsa taelo ho latela karolo 22 ya Molao.

### **Dinyewe tsa baahi**

9. (1) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao ho moqosuwa nyeweng e nngwe le e nngwe ya baahi ebang—

(a) ho ya ka Thuso ya Molao Afrika Borwa nyewe e na le kgonahalo e ntle ya katleho;

(b) ho ya ka Thuso ya Molao Afrika Borwa nyewe e na le kgonahalo e ntle ya ho kenya tshebetsong taelo ya lekgotla; le

(c) Thuso ya Molao Afrika Borwa e na le disebediswa tse hlokahalang ho latela tlaleho e ngotsweng, moo tlaleho eo e hlokahalang.

(2) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao ka maikemisetso a ho etsa tlaleho ya mabaka, pele bohato bo bong le bo bong bo nkuwa, ntle le moo bohato bo hlokahalang ho ka thibela tlhaloso, qeto e etswang ke lekgotla moqosuwa a se teng kapa phediso ya ditokelo tsa moqosuwa, ho latela molawana (1).

(3) Tlaleho ya mabaka bakeng la nyewe ya baahi ha e hlokahale dinyeweng tse latelang:

- (a) Tlhalano;
- (b) dinyewe tsa ho lelekwa moahong, moo thuso e ka nehelwang ho ka buisana le monga thepa ho ka dumella moamohedi wa thuso ya molao ho ka dula moo bakeng la nako e itseng;
- (c) dinyewe tsa dikgoka tsa ka lapeng ho ka sireletsa ngwana;
- (e) tsamaiso ya mafa; le
- (f) tlhokomelo.

(4) Ha thuso ya molao e se e nehetswe ho motho bakeng la nyewe lekgotleng la Rephaboliki mme bopaki bo tlo mamelwa khomisheneng e ka ntle ho Rephaboliki, Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao bakeng la ho kaba teng ha kemedi e le nngwe kapa ho feta e bang—

- (a) Thuso ya Molao Afrika Borwa e na le matlole a lekaneng, mme
- (b) Thuso ya Molao Afrika Borwa e nahana hore mabaka a utlwahalang a teng.

(5) Thuso ya Molao Afrika Borwa e ka se nehelane ka thuso ya molao bakeng la tatofatsano e lekgotleng la dinyewe le leng le le leng la kantle.

#### **Dinyewe tsa baahi bakeng la tshireletso ya ditokelo tsa molaotheo**

**10.** (1) Ho ipapisitse le melao ena le boteng ba disebediswa, thuso ya molao e ka nehelwa ka ho kenngwa tshebetsong karolo 7 ya Molaotheo.

(2) Thuso ya Molao Afrika Borwa e tshwanetse ho nahanisisa mokgwa o latelang ha e etsa qeto ya hore motho a ka fumana thuso ya molao bakeng la nyewe ya baahi jwalo ka ha ho hlalositse molawaneng (1):

- (a) Botebo ba ditlamorao bakeng la mokopi wa thuso ya molao;
- (b) Bothata ba molao o amehang le tsamaiso;
- (c) bokgoni ba mokopi wa thuso ya molao bah o ka ipuella ka bokgabane ntle le mmuelli;
- (d) bokgoni ba ditjhelete ba mokopi wa thuso ya molao;
- (e) kgonahalo ya tlholo ya mokopi wa thuso ya molao nyeweng eo;
- (f) hore na mokopi wa thuso ya molao a ka kotelwa papisong le ba bang nyeweng; le
- (g) hore na ditlhoko tse ding tsa melao ena difihletswe.

#### **Moedi le ho sekenyeletswe ha thuso ya molao ya baahi**

**11.** (1) Ho ya ka Thuso ya Molao Afrika Borwa, thuso ya molao e ka se nehelwe bakeng la dinyewe tseo mokopi wa thuso ya molao a senang ho una molemo teng: Ha feela molao ona o sa sebetse tatofatsanong e lekgotleng la dinyewe la tekatekano jwalo ka ha ho hlalositse ho *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)*, le ho sekgahla ditshebeletsong tsa molao.

- (2) Thuso ya molao e ka senhelwe bakeng la mefuta e latelang ya dinyewe:
- (a) dipatlisiso tsa ditjhelete ho latela karolo 65 ya *Magistrates' Courts Act, 1944 (Act No. 32 of 1944)*;
  - (b) taelo ya tsamaiso ho latela dintlha tsa karolo 74 ya *Magistrates' Courts Act, 1944*;
  - (c) tsamaiso ya lefa, ho ipapisitswe le molao 23;
  - (d) ho nehelana kapa ho nkuwa ha lefa;
  - (e) ho jellwa thepa e le ho ka lefella mekitlane;
  - (f) kopo bakeng la ho kgutlisetsa semelong ha ya sakgoneng ho ka lefella mekitlane ya hae;
  - (g) tjhebisiso setjha ya mekitlane; le
  - (h) ketso e tleleimang ditshenyehelo ka —
    - (i) ho senyalebitso;
    - (ii) ho dia seriti, ho sa kenyeletsa ho dia seriti ka lebaka la bootswa; le
    - (iii) ho nyatsa poraevesi:
 Ha feela thuso ya molao e ka nehelwa ho ka sireletsa diketso tsa mofuta ona.

(3) Ho ipapisitswe le molao 23(8), thuso ya molao e ka se nehelwe bakeng la nyewe e nngwe le e nngwe e ka tliswang lekgotleng la dinyewe la ditlleimi tse nyane ho latela *Small Claims Courts Act, 1984 (Act No. 61 of 1984)*: Ha feela Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao bakeng la tleleimi e sa feteng matla a tjhelete ya lekgotla la dinyewe la ditlleimi tse nyane ka diperesente tse fetang 50.

(4) Thuso ya molao e ka se nehelwe bakeng la ho nka bohato kapa ho sireletsa ngangisanong ya lepato: Ha feela thuso ya molao e ka nehelwa ha ngangisano ya lepato e ka rarollwa ka mekgwa e meng ya tharollo ya ngangisano.

(5) Thuso ya molao e ka se nehelwe bakeng la ho nehelana ka tshireletso: Ha feela dintlha moo sherifi e hlokanng tshireletso kapa tshwarelo e le ho ka kenya tshebetsong taelo ya lekgotla mme moo kopo e ipapisitseng le melao ya lekgotla mme e ka buellwa ke morongwa wa lekgotla la dinyewe, Thuso ya Molao Afrika Borwa e ka nehelana ka tshireletso e hlokalalang ho morongwa wa lekgotla la dinyewe.

- (6) Thuso ya molao e ka se nehelewe bakeng la tleleimi —
- (a) e hlalositsweng; kapa
  - (b) ha ho kgonahale hore e ka sebetswa nakong e setseng pele ho tlhaloso; mme
  - (c) ho se nehelwe kopo bakeng la moo nako ya molao e fedileng.

(7) Thuso ya molao e ka se nehelwe bakeng la dintlha tsa leqwetha la ditumellano kapa phethiso ya thepa, dintlheng tse akgang bana, dintlha tsa phethiso ya thepa bakeng la bana di ka etswa ka thuso ya ntle le tefello.

(8) Thuso ya molao e ka nehelwa bakeng la dinyewe tse senang tatofatsano, tse akgang tsamaiso ya ho namola qaka kapa ho namola.

(9) Thuso ya molao e ka se nehelwe bakeng la dinyewe tsa baahi moo mokopi wa thuso ya molao a thswanetse ho ka nehelwa kemedi ya molao ka ditgjeho tsa mmuelli wa mmuso kapa lefapha la mmuso.

(10) Thuso ya molao e ka se nehelwe bakeng la ho lebisa tleleimi kgahlano le Letlole la Kotsi le theuweng ke *Road Accident Fund Act, 1996 (Act No. 56 of 1996)*, kapa tleleimi ya temalo, ho ipapisitswe le molao 23.

(11) Thuso ya molao e ka se nehelwe bakeng la mamelwa ha nyewe ka pela lekgotla la tsamaiso: Ha feela thuso ya molao e ka nehelwa ho shebisisa botjha qeto ya lekgotla la tsamaiso.

(12) Mokopi wa thuso ya molao a ka fumana thuso ya molao bakeng la nyewe e le nngwe ya baahi ka nako, ntle le ha Thuso ya Molao Afrika Borwa e dumela hore thuso ya molao e ka nehelwa bakeng la dinyewe tse fetang bonngwe e bang e kgotsofetse hore—

- (a) ho na le kgonahalo e ntle hore nyewe e ka hlolwa; le
- (b) ditjeho tsa dinyewe di ka buellwa ke dikuno ho mokopi wa thuso ya molao.

#### **Boipiletso ba baahi**

**12.** Thuso ya molao e ka nehelwa feela bakeng la boipiletso nyeweng ya baahi e bang Thuso ya Molao Afrika Borwa e kgotsofetse hore—

- (a) ho na le kgonahalo ya hore boipiletso botla atleha; mme
- (b) ditjeho tsa boipiletso di tla buellwa ke dikuno tse fumanweng ke mokopi wa thuso ya molao.

#### **Tlhokomelo, dikgoka tsa ka lapeng le dinyewe tsa tlhekefetso**

**13.** (1) Nyeweng ya tlhokomelo ho latela *Maintenance Act, 1998 (Act No. 99 of 1998)*, nyeweng ya dikgoka tsa ka lapeng ho latela *Domestic Violence Act, 1998 (Act No. 116 of 1998)*, kapa ntlha e tlisitsweng ho latela *Protection from Harassment Act, 2011 (Act No. 17 of 2011)*, Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao ho mokopi wa thuso ya molao bakeng la kopano e le ho ka moeletska ka ditokelo tsa hae, mkgwa wa tsamaiso oo a ka o latelang ha mmoho le kgonahalo ya katleho: Ha feela thuso ya molao e ka nehelwa motho ya dilemo tse fetang 60 nyeweng ya dikgoka tsa ka lapeng moo ho hlokalalang hore motho eo a sireletswe.

(2) Thuso ya molao e ka nehelwa bakeng la kemedi ya molao lekgotleng la dinyewe bakeng la ho mamelwa ha nyewe e hlalositweng molawaneng (1), e bang—

- (a) ho ya ka Thuso ya Molao Afrika Borwa tleleimi ya mokopi wa thuso ya molao kapa kemedi e na le kgonahalo e ntle ya katleho; mme
- (b) mohanyetsi a emetswe ke moemedi wa molao kapa e le mosebeletsi wa molao.

(3) Thuso ya molao e ka nehelwa bakeng la kemedi ya molao dintlheng tsa tlhokomelo e bang—

- (a) mokopi wa thuso ya molao ha a kgona ho ka batla kapa ho phethisa taelo ya tlhokomelo bakeng la dikgwedi tse fetang 12 kas lebaka la tlholeho ya sesebediswa; kapa
- (b) hona le tlhekefetso ya tsamaiso ya lekgotla.

#### **Dinyewe tsa basebetsi**

**14.** (1) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao bakeng la—

- (a) kemedi ya molao Lekgotleng la Basebetsi le Lekgotleng la Boipiletso la Basebetsi;

- (b) thuso ho basebeletsi ba dipolasi ho ka sebedisa ditokelo tsa bona tse ka tlasa *Labour Relations Act, 1995 (Act No. 66 of 1995)*, ka ha ho hlalositse karolong 8(3) ya *Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)*; le
- (c) thuso ho ka kenya tshebetsong sepheto sa Khomishene ya Poelano le Bonamodi e theuweng ho latela Molao wa Dikamano Mesebetsing wa 1995, ntle le moo ho se nang kgonahalo ya phumano.

(2) Thuso ya Molao Afrika Borwa e ka se nehelane ka thuso ya molao bakeng la kemedi ya molao ditsamaisong tsa poelano le bonamodi tse Khomisheneng ya Poelano le Bonamodi kapa makgotleng a ditherisano a theuweng ho latela Molao wa Dikamano Mesebetsing wa 1995.

### **Tlhalano le dinyewe tsa molao wa malapa**

**15.** (1) E bang thuso ya molao e nehetswe bakeng la ho tlisa nyewe ya tlhalano, nyewe e tshwanetse ho etsawa lekgotleng la dinyewe karolong ya lebatowa e theuweng ho latela Molao wa Makgotla a Dinyewe a Mmaseterata wa 1944: Ha feela Thuso ya Molao Afrika Borwa e ka nehelana ka tumello ya hore nyewe e etswe lekgotleng le leng ka mora ho nahanisa ka dintlha tse latelang:

- (a) kgonahalo ya ditjeho;
- (b) ditlhophiso, ho kenyeletsa bohole ba mokopi wa thuso ya molao le lekgotla la dinyewe; le
- (c) dikgahleho tsa mokopi wa thuso ya molao.

(2) Thuso ya Molao Afrika Borwa e ka se nehelane ka thuso ya molao bakeng la dintlha tse latelang:

- (a) boipiletso tlhalanong;
- (b) nyewe ya tlhalano e bang Thuso ya Molao Afrika Borwa e kgotsofetse hore ha hona kgonahalo ya katleho ho moamohedi wa thuso ya molao; le
- (c) nyewe ya tlhalano e bang mokopi wa thuso ya molao a nyalane le molata hore molata eo a fumane boahi ba Afrika Borwa.

(3) Thuso ya molao e ka nehelwa e le ho ka fapana kapa ho kenya tshebetsong taelo ya tlhalano e bang—

- (a) ntlha ya ngangisano e le ka tlhokomelo ya bana kapa ho bona bana;
- (b) mokopi o tshhetswa ke tlaleho ya mosebeletsi wa setjhaba kapa Atfokate ya Lelapa; le
- (c) mohanyetsi a hana, a hloleha kapa a sa natse ho kenya tshebetsong taelo ya lekgotla kapa tumellano e tokomaneng ya molao.

(4) Thuso ya molao e ka nehelwa ho ka fapana kapa ho lokisa taelo ya tlhalano e le ho ka kenya taelo bakeng la tefello ya tswala ya letlole la penshene ke letlole la penshene kapa ho etsa bonnete ba tlhaloso e nepahetseng ya letlole la penshene taelong ya lekgotla.

(5) Ka mora ho nehelana ka disamane tsa tlhalano Thuso ya Molao Afrika Borwa e ka etsa kopo lekgotleng la dinyewe bakeng la taelo hore mohanyetsi a ka ba le seabo ho ditjeho tsa mokopi wa thuso ya molao: Ha feela kopo ena e sa tliswi e bang ditjeho tsa kopo di ka feta tsa seabo.

### **Thuso ya molao bakeng la keletso ya ditsebi**

16. Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao bakeng la mohopolo wa ditsebi.

#### **Ditokelo tsa lefatshe**

17. (1) Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao bakeng la dinyewe tse ka tlasa *Restitution of Land Rights Act, 1994 (Act No. 22 of 1994)* e bang Mokhomishenara wa ditlleimi tsa lefatshe —

- (a) a ka fumantsha matlole ho Thuso ya Molao Afrika Borwa ho lefella nyewe ena; kapa
- (b) e le mohanyetsi ngangisanong kapa e tlabang ngangisano.

(2) Thuso ya molao e ka se nehelwe bakeng la ho kenya tleleimi le dipatglisiso ka tlasa *Restitution of Land Rights Act, 1994*.

#### **Dinyewe tse amanang le *Land Reform (Labour Tenants) Act, 1996, Extension of Security of Tenure Act, 1997* le *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998***

18. (1) Thuso ya molao e ka nehelwa ho batho ba anngwe ke *Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996)*, *Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)* le *Prevention of Illegal Occupation and Eviction from Land Act, 1998 (Act No. 19 of 1998)*: Ha feela ho nehelwa ha thuso ya molao ho latela molao ona ho ipapisitse le lefapha le amehang la mmuso ho etsa matlole a be teng.

(2) Thuso ya molao e ka nehelwa ho moqosuwa kapa moqosi e leng modudi jwalo ka ha ho hlalositswe Melaong e hlaositsweng molawaneng (1), e bang Thuso ya Molao Afrika Borwa e kgotsofetse hore yena le ba lelapa la hae ba tshosetswa ka ho ntshwa.

(3) Dintlheng tse molawaneng (1), moo tatofatsano e seng e qadile, Thuso ya Molao Afrika Borwa e ka nehelana ka bonamodi kapa ka mekgwa e meng ya tharollo ya ngangisano, e bang Thuso ya Molao Afrika Borwa e kgotsofetse hore mekgwa ena e ka—

- (a) fedisa kapa ho kgutsufatsa tatofatsano; kapa
- (b) fokotsa ditefello le ditjeho tse neng ditshwanetse ho lefella ke Thuso ya Molao Afrika Borwa.

#### **Bahlokang Botshabelo**

19. (1) Thuso ya molao e ka nehela mokopi wa thuso ya molao ya hlokang Botshabelo ka hare ho Rephaboliki kapa ya ikemiseditseng ho etsa kopo ya Botshabelo ka tlasa Kgaolo 3 kapa 4 ya *Refugees Act, 1998 (Act No. 130 of 1998)*.

(2) Ha ho hloka hore mokopi wa thuso ya molao ya hlaloswa molawaneng (1) ho ba teng ka boena ka hara Rephaboliki: Ntle feela ha ka ba teng ka boena ka hara Rephaboliki ka nako eo a etsang kopo ya thuso ya molao.

#### **Dinyewe tsa Tumellano ya Hague**

20. Thuso ya molao e ka nehelwa bakeng la dinyewe tsa Tumellano ya Hague: Ha feela ho sa hloka hore mokopi wa thuso ya molao e se modudi ka hare ho Rephaboliki.

#### **Dinyewe tsa lekgotla la dinyewe la tekano**

21. Thuso ya molao e ka nehelwa bakeng la dintlha tse buswang ke *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)*.

**Dinyewe tsa baahi tse akgang bana**

**22.** (1) Thuso ya molao e ka nehelwa ho ngwana ya ka hlokofoatswang ke ho hloka toka nyeweng ya baahi, ka mora ho shebisisa dintlha tse latelang:

- (a) botebo ba ditlamorao bakeng la ngwana le hore ditokelo tsa ngwana le ditokelo tsa ngwana tsa molaotheo tsa molaotheo di kotsing;
- (b) molao o amehang le tsamaiso dithata ho le ho kae;
- (c) maemo a ditjeho a ngwana kapa batsadi ba ngwana kapa mohlokomedi; le
- (d) kgonahalo ya katleho ya ngwana nyeweng eo.

(2) Moo ngwana e leng moqosi kapa moqosuwa nyeweng ya baahi, dintlha tsa nyewe ha di bohlokwa ha kalo mme ngwana a ka nehelwa thuso ya molao.

(3) E bang ngwana a etsa kopo ya thuso ya molao e le ho ka tlisa nyewe ya baahi, Thuso ya Molao Afrika Borwa e ka shebisisa dintlha tsa nyewe eo le kgonahalo ya katleho.

(4) Teko ya bokgoni e kenngwa tshebetsong ha mokopi wa thuso ya molao e le ngwana, ho ipapisitswe le tse latelang:

- (a) E bang ngwana a sa thuswi ke batswadi ba hae kapa mohlokomedi, bokgoni ba ngwana bo a shebisiswa;
- (b) e bang ngwana a thuswa ke motswadi kapa mohlokomedi, bokgoni ba motswadi kapa mohlokomedi bo a shebisiswa; kapa
- (c) e bang ngwana a thuswa ke motswadi wa hae kapa mohlokomedi ya fetang teko ya bokgoni mme a ka kgona ho nehelana ka kemedi ya molao bakeng la ngwana, empa a hlaleha, a hana kapa a sa natse, thuso ya molao e ka nehelwa ngwana: Ha feela Thuso ya Molao Afrika Borwa e ka kenywa nyewe kgahlano le motswadi kapa mohlokomedi eo e le ho ka fumantshwa ditjeho tsa thuso ya molao.

**Molao o mong o hloakang kemedi ya molao bakeng la ngwana**

**23.** (1) Thuso ya molao e ka nehelwa ngwana bakeng la kemedi ya molao ho ka kena dipakeng tlhalanong kapa ditsamaisong tsa tlhokomelo mahareng a batswadi le ngwana e bang—

- (a) ho le bohlokwa ho sireletsa dikgahleho tsa ngwana; le
- (b) e bang tlhokeho ya toka e tlabang teng.

(2) Thuso ya molao e ka nehelwa ngwana bakeng la tsamaiso ya lefa moo ho hlokalang ho sireletswa dikgahleho tsa ngwana.

(3) Thuso ya molao jwalo ka ha ho hlalositse molawaneng (2) e ka nehelwa feela moo boleng ba lefa bo sa feteng palo e hlwauweng ke Letona le ikarabellang ho tsamaiso ya toka ho latela karolo 18(3) ya *Administration of Estates Act, 1965 (Act No. 66 of 1965)*, ntle le moo ho nang le thepa e sa suthing eo boleng ba yona bo fetang bo hlwauweng ho latela karolo 18(3) empa boleng boo bo sa fete R500 000.

- (4) Thuso ya molao e ka nehelwa ngwana ho ka etsa —
- (a) tleleimi kgahlano le Letlole la Kotsi ya Tseleng le theuweng ke *Road Accident Fund Act, 1996 (Act No. 56 of 1996)*; le
- (b) tleleimi ya ho lemala.

(5) Thuso ya molao e ka nehelwa ngwana nyeweng ya dikgoka tsa ka lapeng moo ho hlokaalang hore dikgahleho tsa ngwana eo di sireletswe le e bang tlhokeho ya toka e kabang teng.

(6) Thuso ya molao e ka nehelwa ho ngwana wa boditjhaba ya senang tshehetso jwalo ka ha ho hlalositswe ho *Refugees Act, 1998*, moo ho hlokaalang ho ka sireletsa dikgahleho tsa ngwana eo le e bang tlhokeho ya toka e ka bang teng.

(7) Thuso ya molao e ka nehalwa ngwana nyeweng e tlisitsweng ho latela *Harassment Act, 2011*, moo ho hlokaalang ho ka sireletsa dikgahleho tsa ngwana eo le e bang tlhokeho ya toka e kabang teng.

(8) Thuso ya molao e ka nehelwa ngwana bakeng la tleleimi ya tjelete e fetang matla a taolo ya tjelete lekgotleng la ditleleimi tse nyane ka diperesente tse 50, moo ho hlokaalang hore dikgahleho tsa ngwana disireletswe le e bang tlhokeho ya e kabang teng.

(9) Thuso ya molao e ka nehelwa ngwana e bang ho hlokaala bakeng la ho thonngwa ha moemedi wa molao ya tla emela ngwana ya sa kgoneng ho ka inkela qeto kapa ya kgethuweng ke lekgotla ho ka hlokemela thepa ya ya sa kgoneng ho ikemela.

**Mefuta ya Molao wa Bana e bohlokwa moo kemedi ya molao e ka laelwang ho latela karolo 55 ya Molao wa Bana**

24. (1) Thuso ya molao e ka nehelwa ngwana ho ka fumana kemedi ya molao ho etsa bonnete hore maikarabelo a botswadi le ditumellano tsa ditokelo, jwalo ka ha ho hlalositswe karolong 22 ya Molao wa Bana, e le dikgahlehelong tsa ngwana.

(2) Thuso ya molao e ka nehelwa motho e mong le e mong ya nang le kgahleho tlhokomelong le thuthuhong ya ngwana ho ka etsa kopo Lekgotleng le Phahameng la Dinyewe, lekgotleng la dinyewe la setereke kapa lekgotleng la dinyewe la bana bakeng la taelo e nehelang mokopi wa thuso ya molao ho ka bona ngwana eo kapa ho ka hlokomela ngwana eo jwalo ka ha ho hlalositswe karolong 23 ya Molao wa Bana.

(3) Thuso ya molao e ka nehelwa ho motho e mong le e mong ya nang le kgahleho tlhokomelong le thuthuhong ya ngwana ho ka etsa kopo Lekgotleng le Phahameng la Dinyewe taelo e nehelanang ka bohlokamedi ba ngwana eo ho mokopi wa thuso ya molao jwalo ka ha ho hlalositswe karolong 24 ya Molao wa Bana.

(4) Thuso ya molao e ka nehelwa ho monna ya sa nyalang mme wa ngwana mme e le kapa a re ke ntate wa madi wa ngwana, ho ka etsa kopo ya taelo lekgotleng la dinyewe bakeng la netefaletso ya hore ke ntate wa ngwana e bang mme wa ngwana—

(a) a hana ho dumela tokiso e etswe ngodisong ya tswalo ya ngwana;

(b) ha ana bokgoni ba ho ka nehelana ka tumelo e jwalo;

(c) ha a fumanehe; kapa

(d) o hlokahetse,

Jwalo ka ha ho hlalositswe karolong 26 ya Molao wa Bana.

(5) Thuso ya molao e ka nehelwa ho mang kapa mang ho ka etsa kopo Lekgotleng le Phahameng la Dinyewe, lekgotleng la dinyewe la setereke kapa lekgotleng la dinyewe la bana bakeng la taelo —

- (a) e emisang bakeng la nako e itseng;
- (b) e fedisang;
- (c) e eketsang; kapa
- (d) e nang le moedi,

e nngwe le e nngwe kapa maikarabello ohle a botswadi le ditokelo tseo motho ya itseng a nang le ona mabapi le ngwana, ha mmoho le, e bang ho nepahetse, kopo bakeng la ho bona ngwana le tlhokomelo ya ngwana ho mokopi wa thuso ya molao, jwalo ka ha ho hlalositse karolong 23 le 28 ya Molao wa Ngwana.

(6) Thuso ya molao e ka nehelwa ho mang kapa mang ho ka etsa kopo lekgotleng bakeng la ho inkela ngwana jwalo ka ha ho hlalositse Molaong wa Ngwana.

(7) Thuso ya molao e ka nehelwa ngwana e mong le e mong ho ka fumana kemedi ya molao ho ka emela ngwana eo dikopong tsohle tse ka tlasa Tumellano ya Hague, e bang ditlhoko tsa karolo 55 ya Molao wa Bana di fitlhetswe.

#### **Dintlha tse amanang le *Mental Health Care Act, 2002***

**25.** (1) Thuso ya molao e a fumaneha ho basebedisi ba tlhokomelo ya bophelo ba kelello mme teko ya bokgoni e a sebediswa ha mokopi wa thuso ya molao e le mosebedisi wa tlhokomelo ya bophelo ba kelello jwalo ka ha ho hlalositse karolong 15 ya *Mental Health Care Act, 2002 (Act No. 17 of 2002)*, ho ipapisitse le molawana (2).

(2) E bang—

- (a) Mosebedisi wa tlhokomelo ya kelello a sa thuswa ke motswadi wa hae, mohlokamedi, molekane, molekane wa bophelo kapa ngwana, bokgoni ba mosebedisi wa tlhokomelo ya kelello e tshwanetse ho shebisiswa;
- (b) mosebedisi wa tlhokomelo ya kelello a thuswa ke motswadi wa hae kapa mohlokamedi, molekane, molekane wa bophelo kapa ngwana, bokgoni ba motswadi eo, mohlokamedi, molekane, molekane wa bophelo kapa ngwana bo tshwanetse ho shebisiswa; kapa
- (c) Mosebedisi wa tlhokomelo ya kelello a thuswa ke motswadi wa hae, mohlokamedi, molekane, molekane wa bophelo kapa ngwana ya fetang teko ya bokgoni mme a ka kgona ho nehelana ka kemedi ya molao bakeng la mosebedisi wa tlhokomelo ya kelello, empa a hloleha, a hana kapa a sa natse ho ka etsa jwalo, thuso ya molao e tshwanetse ho nehelwa ho motho eo ya sebedisang tlhokomelo ya kelello: Ha feela Thuso ya Molao Afrika Borwa e ka etsa nyewe kgahlano le motswadi eo, mohlokamedi, molekane, molekane wa bophelo kapa ngwana ho ka fumana ditjeho tseo tsa thuso ya molao.

#### **Khomishene ya Dipatlisiso**

**26.** Moo matlole a fumanehang bakeng la thuso ya molao ka ho theha bolaodi ba khomishene jwalo ka ha ho hlalositse ho *Commissions Act, 1947 (Act No. 8 of 1947)*, thuso ya molao e ka nehelwa bakeng la kemedi ya molao bakeng la motho ya tlo hlahella ka pela khomishene moo khomishene eo e netefaditse hore motho eo a ka hlahella ka pela khomishene.

#### **Ho ka fumana thuso ya molao le teko ya bokgoni**

27. (1) Hore o kgone ho ka fumana thuso ya molao bakeng la dinyewe tsa baahi kapa tlolo ya molao, mokgolo wa mokopi wa thuso ya molao ka kakaretso ho ntshitswe lekgetho le le tse ding ditshwanetse ho ba ka hara teko ya bokgoni e hlalositsweng molawaneng (2), (3), (4), (5) le (6) pele thuso ya molao e ka nehele.

(2) Mokopi wa thuso ya molao bakeng la nyewe ya tlolo ya molao mme a na le lekeno la R5500 ka kgwedi ka mora lekgetho kapa ka tlase ho moo, a ka kgona ho fumantshwa thuso ya molao nyeweng eo ya tlolo ya molao ho sa natse hore mokopi o na le molekane kapa ke setho sa lelapa.

(3) Mokopi wa thuso ya molao bakeng la nyewe ya baahi mme a sena molekane kapa e se setho sa lelapa mme a na le mokgolo wa kgwedi wa R5 500 ka mora lekgetho le tse ding, kapa ka tlase ho moo, a ka kgona ho fumantshwa thuso ya molao nyeweng eo ya baahi.

(4) Mokopi wa thuso ya molao bakeng la nyewe ya baahi mme a na le molekane kapa mokopi e le setho sa lelapa mme lekeno la lelapa la kgwedi e le R6000 ka mora lekgetho le tse ding, kapa ka tlase ho moo, a ka kgona ho fumantshwa thuso ya molao nyeweng eo ya baahi.

(5) Mokopi wa thuso ya molao kapa mokopi eo e leng setho sa lelapa ya senang thepa e sa suthing mme a na le thepa e tsamayang eo boleng ba yona bo leng ka tlasa R100 000 a ka kgona ho fumantshwa thuso ya molao bakeng la nyewe ya baahi kapa ya tlolo ya molao.

(6) Mokopi wa thuso ya molao kapa mokopi eo e leng setho sa lelapa ya nang le thepa e sa suthing mme a na le thepa e sa suthing eo boleng ba yona bo fihlang ho R500 000, a ka kgona ho fumantshwa thuso ya molao bakeng la nyewe ya baahi kapa ya tlolo ya molao: Ha feela mokopi wa thuso ya molao kapa setho sa lelapa se tshwanetse ho dula ka hare ho thepa e sa suthing kapa bonyane ka hare ho e nngwe ya thepa e sa suthing moo ho nang le e fetang bonngwe, ntle le ha Thuso ya Molao Afrika Borwa e ka phethela ka mokgwa o mong.

#### **Palo e kenyeleditsweng kapa e ntshitsweng bakeng la ho ka fumantshwa thuso ya molao**

28. (1) Krante e lefellwang ke Ejensi ya Tshireletso ya Setjhaba Afrika Borwa ha ya kenyeletswa palong ya lekeno bakeng la maikemisetso a teko ya bokgoni.

(2) Tlhokomelo ya molekane kapa tshehetso ya ngwana e fumanwang ke mokopi wa thuso ya molao e ballwa lekenong bakeng la maikemisetso a dipalo.

(3) E bang e nngwe ya thepa e le ya terasete, khamphani kapa motho ya qoswang empa e ka laolwa, ka ho otloloha kapa ka ho se otlolohe, ke mokopi wa thuso ya molao kapa molekane wa hae, bao a ba hlokomelang, ngwana bo, motswadi, wa le loko kapa ya kgethuweng, bakeng la ho una ka ho otloloha kapa ka ho se otlolohe thuso ya molao ya mokopi kapa molekane, bao a ba hlokomelang, ngwana bo, motswadi, wa leloko kapa ya kgethuweng, hore thepa e tla nkuwa e le ya mokopi wa thuso ya molao ka maikemisetso a ho hlwaya hore mokopi o a dumelleswha ho ka fumana thuso ya molao ho latela teko ya bokgoni: Ha feela moo ho nang le baja lefa ntle le mokopi wa thuso ya molao kapa molekane wa hae,

bao a ba hlokomelang, bana ba bo, motswadi, wa leloko kapa ya kgethuweng, mokopi o nkuwa e le monga karolo ya peresente ya thepa.

(4) Moo mokopi wa thuso ya molao a entseng kopo bakeng la ngangisano kapa kgonahalo ya ngangisano mahareng a hae le molekane wa hae, thuso ya molao, teko ya bokgoni ya mokopi wa thuso ya molao e tshwanetse ho hlahlojwa jwalo ka ha e ka ha a na molekane.

(5) Mokopi wa thuso ya molao o tshwanetse ho nehelana ka bopaki ba ditokomane le phatlalatso e ngotsweng ya thepa bakeng la teko ya bokgoni, moo e hlokahalang.

(6) Mokopi wa thuso ya molao o tshwanetse ho nehelana ka bopaki hore ke motho ya itlhophereeng jwalo ka ha ho hlahositswe melaong ena.

(7) Thuso ya Molao Afrika Borwa e etsa dipatlisiso tsa forensiki tsa maemo a ditjhelete a mokopi kapa moamohedi pele thuso ya molao e nehelwa kapa ka mora hore thuso ya molao e nehelwe ka boyona kapa ka monehelani wa tshebeletso.

#### **Ha ho tokelo ya ho ka kgetha kemedi ya molao**

**29.** Ha ho mokopi wa thuso ya molao ya nang le tokelo ya ho ka kgetha kemedi ya molao ya tla laelwa ho ka moemela.

#### **Ho feta teko ya bokgoni le kgetho**

**30.** (1) Thuso ya Molao Afrika Borwa e na le kgetho ya ho ka dumela thuso e felletseng ya molao ho mokopi e mong le e mong ya fetang teko ya bokgoni ka R3 000 ka kgwedi ka lekeno ka kakaretso bakeng la dintlha tsohle le R100 000 ya thepa bakeng la dintlha tsohle.

(2) Thuso ya Molao Afrika Borwa e ka shebisisa kopo ya motho e mong le e mong ya sa dumelleseng ho ka fumantshwa thuso ya molao ho latela teko ya bokgoni ka tlasa molao 27(1) le (2), empa a ahlotswa ka maikutlo, a itlhophere mme a hloka kutlwelo bohloko ka tlasa mabaka le maemo a ikgethileng: Ha feela kopo e jwalo e dumelleseha ka thuso ya molao ho latela molao 3(1) le 10(1).

#### **Thuso e sa fellang thusong ya molao**

**31.** (1) E bang mokopi wa thuso ya molao a sa dumellesehe ho ka fumantshwa thuso ya molao ho latela teko ya bokgoni bakeng la tlolo ya molao, Thuso ya Molao Afrika Borwa e ka nehelana ka thuso e sa fellang ya molao mme e hloke hore mokopi wa thuso ya molao a be le seabo ditjehong tsa thuso ya molao.

(2) Ka ho hlahloba hore na thuso e sa fellang ya molao e nehelwe Thuso ya Molao Afrika Borwa e tshwanetse ho shebisisa dintlha tse latelang:

- (a) Hore mokopi o tla hloka toka e bang thuso ya molao e sa nehelwe;
- (b) hore na mokopi wa thuso ya molao o tla kgona ditjeho tsa hae tsa kemedi ya molao; le
- (c) hore mokopi a ka kgona ho fetola boemo ba hae ba bophelo ho ka kgona ho lefella ditjeho tsa hae tsa kemedi ya molao.

**Seabo ka moamohedi wa thuso ya molao**

**32.** (1) E bang thuso e sa phethahalang ya molao e nehelwa ya molao jwalo ka ha ho hlalositse molaong 31(1), palo ya seabo jwalo ka ha ho hlalositse ka hara Bukana e tshwanetse ho lefella pele ho Thuso ya Molao Afrika Borwa kgwedi e nngwe le enngwe ho fihlela—

- (a) ditjeho di lefella ka botlalo;
- (b) pheletso ya nyewe; kapa
- (c) moqosuwa o fumanwe molato mme a fuwa kotlo ya ho ya tjhankaneng ka mora moo ha ho tefello e tla etswa.

(2) E bang maemo a moamohedi wa thuso ya molao a fetoha ka mora hore a fumantshwe thuso e sa fellang ya molao jwalo ka ha ho hlalositse molaong 31(1), Thuso ya Molao Afrika Borwa e ka lokisa palo ya seabo.

(3) E bang moamohedi wa thuso ya molao a hloleha ho lefella sa hae seabo jwalo ka ha Thuso ya Molao Afrika Borwa e hlalositse, thuso ya molao e ka kgaolwa.

(4) Moo lekgotla, ho latela karolo 22(1) ya Molao, le laelang thuso ya molao, mme mokopi wa thuso ya molao a feta moedi wa teko ya bokgoni, taelo eo ya lekgotla e tshwanetse ho nehelana ka seabo ho latela molao ona.

**Ho fediswa ha thuso ya molao**

**33.** (1) Thuso ya Molao Afrika Borwa e ka fedisa thuso ya molao ya mokopi ka lebaka la boitshwaro la mokopi bo ka akgang —

- (a) ho se hlole a kgona ho latela teko ya bokgoni;
- (b) a hloleha ho hlahella lekgotleng la dinyewe ka nako letsatsing le kgethuweng ka ntle le ho nehelana ka tlhaloso e utlwahalang bakeng la ho sehlahelle mme taelo ya ho tshwarwa ha hae e ntshitswe;
- (c) o hana ho dumela tumellano ka ntle le mabaka a utlwahalang;
- (d) ha a ikamahanye le taelo jwalo ka ha ho hlalositse molaong 32;
- (e) o hlakotse thomo ya moemedi wa molao ya rometsweng ka ntle le mabaka a utlwahalang; kapa
- (f) o thatafalletsa moemedi wa molao ho ka etsa mosebetsi wa hae.

(2) E bang thuso ya molao e ka fediswa Thuso ya Molao Afrika Borwa e ka nehelana ka taelo ho moemedi wa molao ka mora ho nahanisisa ka dintlha tsa nyewe.

(3) Thuso ya molao e ka fediswa moo moemedi wa molao ya laetsweng a tlohela kapa thomo ya hae e fediswa ke Thuso ya Molao Afrika Borwa ka mabaka a ka kenyeletsang a latelang:

- (a) Mabaka a utlwahalang;
- (b) mosebeletsi wa molao o tlohela ho sebetsa;
- (c) mosebeletsi wa molao o tlohela ho ba mosebeletsi wa Thuso ya Molao Afrika Borwa ya dumelleltsweng;
- (d) mosebeletsi wa molao ha kgone ho ka tswela pele ka lebaka la bophelo bo seng hantle kapa ho hong ho etsang ho be thata ho ka tswela pele ka maikarabelo a hae jwalo ka mosebeletsi; kapa
- (e) mosebeletsi wa molao o hloleha ho tswela pele ka nyewe.

(4) Moo thomo ya mosebeletsi wa molao e fediswang jwalo ka ha ho hlalositsweng molawaneng (3), Thuso ya Molao Afrika Borwa e ka thonya mosebeletsi wa molao e mong e bang moamohedi wa thuso ya molao a ntse a ikamahantse le melao.

(5) Thuso ya Molao Afrika Borwa e ka fedisa thuso ya molao ya moamohedi ka mabaka a ka akgang a latelang:

- (a) Phetoho ya pholisi mofuteng wa dintlha tseo thuso ya molao e fumanehang;
- (b) ho emiswa ha thuso ya molao mefuteng e itseng ya dintlha ka lebaka la ho haella ha disebediswa; kapa
- (c) moamohedi wa thuso ya molao o nehelana ka mabaka a netefatso bakeng la ho fediswa ha thomo ya mosebeletsi.

(6) Moo Thuso ya Molao Afrika Borwa e fedisang thuso ya molao ya moamohedi ka lebaka la dipholisi le disebediswa, e tshwanetse ho etsa bonnete hore moamohedi wa thuso ya molao ha hlokofole ka ho hloka leeme ka lebaka la ho fediswa hoo.

(7) Nyeweng ya thuso ya molao ya baahi Thuso ya Molao Afrika Borwa e tshwanetse ho hula thuso ya molao e bang e nngwe kapa ho feta ya maemo a latelang a etsahala:

- (a) Bothata ba mokopi ha bo bohlokwa kapa ha bona mabaka a utlwahalang mme bo entswe feela ho tena;
- (b) maemo a bontsha ha ho sena dikuno tse tla fihlelwa ka ho nehelana ka thuso ya molao;
- (c) ditjeho tsa molao tse amehang di tla be di sa lekane le tseo mokopi wa thuso ya molao a lakatsang ho ka difumana; kapa
- (d) ho nahanisisa maemo ohle a nyewe, thuso ya molao e ne e sa tshwanela e be e nehetswe bakeng la ditjhelete kapa mabaka a mang.

### **Kganelo ya thuso ya molao**

**34.** (1) Ha kopo ya thuso ya molao e hanetswe mokopi wa thuso ya molao o na le tokelo ya ho etsa boipiletso ho latela tsamaiso ka ha ho hlwauwe Bukaneng.

(2) Thuso ya Molao Afrika Borwa e tshantse ho tsebisa mokopi wa thuso ya molao nyeweng ya tlolo ya molao ka tokelo ya ho etsa kopo lekgotleng bakeng la taelo ya hore a nehelwe moemedi wa molao ka ditjeho tsa Mmuso le hore, pele taelo e nahanisiswa, lekgotla le tla fetisetse ntlha ena bakeng la ho ka lekolwa le ho tlalehwa ke Thuso ya Molao Afrika Borwa ka tlasa karolo 22 ya Molao.

### **Sekgahla ditshebeletsong tsa molao**

**35.** (1) Thuso ya Molao Afrika Borwa e ka lefella tatofatsano kapa mosebetsi o mong wa molao o nang le bokgoni ba ho ka ama maphelo a bahloki hantle ntle le motho kapa batho ba nehelwang ditshebeletso ka kotloloho, nyeweng—

- (a) e ka thehang molao wa Mosupatsela, mokgwa wa tsamaiso ya molao kapa ya hlakisa mekgwa ya molao e tla latelwa ha ho sebetsanwa le bahloki dintlheng tse tshwanang le e na;
- (b) e ka ba le bokgoni bah o rarolla dingangisano tse ngata kapa moo ho tlabang le dingangisano mme e fumane dintlha tse batsi; kapa
- (c) e ka ntlafatsa maphelo a sehlopha sa batho kapa karolo e kgolo ya sehlopha.

(2) Nyeweng e hlalositsweng molawaneng (1) thuso ya molao e ka nehelwa ho ya kgonang ho qosa le ho qoswa ya emetseng palo e ngata ya batho kapa ka ntshetsopele ya kgahleho ya setjhaba ho latela karolo 38 ya Molaotheo.

(3) E bang thuso ya molao e hanetswe jwalo ka ha ho hlalositse molawaneng (1), Thuso ya Molao Afrika Borwa e tshwanetse e tsebise hore mokopi wa thuso ya molao o na le tokelo ya ho ka etsa boipiletso.

#### **Ditjeho tsa bongaka le maeto**

**36.** Thuso ya Molao Afrika Borwa ha e lefelle ditjeho tse amanang le thuso ya molao ya mokopi ho—

- (a) tsa bongaka, dipuo kapa ho robala sepetlele; kapa
- (b) ditjeho tsa maeto bakeng la ho bona ngaka kapa ho hlahlojwa.

#### **Phumano ya ditjhelete ka mora taelo ya thuso ya molao**

**37.** Ha ho tjhelete e salletseng morao ho latela melao ena, Bukana kapa taelo ya lekgotla, e tla fumaneha ka ho otloloha kapa ha ho se otlolohe ke moemedi wa molao ho tswa ho moamohedi wa thuso ya molao, kapa ho tswa mohloding o mong, ka mora ho fumana taelo ya thuso ya molao bakeng la ntlha e itseng.

#### **Tefello ya kuno ya tjhelete ho Thuso ya Molao Afrika Borwa**

**38.** Ha ya amehang tatofatsanong a amohela thuso ya molao ho tswa ho Thuso ya Molao Afrika Borwa a fumana kuno ya tjhelete ka lebaka la kutlwano kapa taelo boemong bo bong le bo bong ka mora hore a fumantshwe thuso ya molao, peresente ya kuno ya tjhelete e tla lefella Thuso ya Molao Afrika Borwa, jwalo ka ha ho hlwauwe Bukana.

#### **Nehelo ya tsamaiso**

**39.** Thuso e nngwe le e nngwe e nehetsweng pele ho melao ena e kena tshebetsong e tshwanetse ho sebetswa ho latela melao ena.

#### **Qaleho**

**40.** Melao ena e kena tshebetsong ka la 22 Phato 2017.