IKHOMISANA YOKUGUQULWA KOMTHETHO YASE-SA: USOMQULU WAMA-37: ICEBO LE-144: UKUPHENYA UMTHETHO WOMSHADO OWODWA

A. Imibuzo emaqondana nomthetho womshado owodwa noma eminingi noma ubudlelwano babantu abangashadile

1.46 Ekupheleni kweminyaka yama-1990 i-SALRC yacabanga maqondana nesidingo sokuhlanganiswa komthetho womshado yi-ss yama-30 kanye nama-31 yoMqulu wamaLungelo. Uma amalungelo ayisisekelo ayedinga imithetho eyahlukene ngaleso sikhathi, yini le abaphenduli abayibona ishintshile manje?[1]

1.47 Ngabe iNingizimu Afrika iyaqhubeka nemithetho yemibuso eyahlukene yezinhlobo ezahlukene zemishado.

1.48 Yibuphi ubuhle kanye nobubi bohlelo olulodwa noma oluhlanganisiwe lwezimfuneko zayo yonke imishado?

1.49 Yibuphi ubuhle kanye nobubi bomthetho omkhulu onezimfuneko ezahlukene zayo yonke imishado?

1.50 Uma umthetho ohlanganisiwe noma ohlukanisiwe uthathwa, ngabe loyo mthetho kumele ubheke imishado kanye nemithetho eyahlukene yobudlelwano babantu abangashadile? Ngabe yibuphi ubuhle kanye nobubi balokho?

1.51 Uma umthetho ohlanganisiwe noma ohlukanisiwe uthathwa, ngabe kumele ube nezimfuneko zemishado efanele kanye/noma ubudlelwano babantu abangashadile, noma kumele uphinde ubheke imiphumela yobudlelwano obunjalo esikhathini sabo kanye nalapho buphela? Ngabe yibuphi ubuhle kanye nobubi balokho.

B. Imibuzo maqondana nencazelo yomshado

2.3 Umthetho ohlongozwayo kumele uwuchaze kanjani umshado?

2.4 I-*Recognition of Customary Marriages Act* uvumela imishado yabantu abangaphezu kwababili kanye nohlaka lwe-*Muslim Marriages Act* uma ifana nemishado yabantu abangaphezu kwababili. Ngabe umthetho ohlongoziwe wenze umhlinzeko yemishado yabantu abangaphezu kwababili, uma kunjalo, kanjani?

2.5 Yini eyenza ubudlelwano ukuthi bube bokuvikelwa okufanayo ngokwemigomo yomthetho ohlukanisiwe?

C. Imibuzo eqondene nemvume kanye namandla okushada

2.17 Ngabe ukuvivinywa komthetho owejwayelekile kanye nemfuneko yomthetho esetshenziswe ukunquma amandla okushada okudinga ukuthi izinhlaka zombili zibe khona lapho kuphethwa ukufaneleka komshado noma ngabe sikhona isidingo sokuguqulwa koMthetho waseNingizimu Afrika?

[1] Izinombolo zendima ziveza indima ehambisana nezinombolo zendima kuSomqulu wama-35

2.18 Ngabe abaphenduli bavumelekile ukuthi bamele uhlaka emshadweni?

2.19 Ngabe kukhona ukwesekwa kwezindlela zomthetho ezibheka ukuzimela kanye nemvume yolwazi yokwenza izinqumo zomshado?

2.20 Ngabe umthetho ohlongoziwe udinga ukuthi izinhlaka kumele zibe namandla ngokwengqondo okungena emshadweni njengokuba i-*Australian Marriage Act* yenza kulokhu?

2.21 Ngabe imvume kankosikazi wokuqala ibe yisidingo uma kungukuthi umyeni wakhe ufuna ukungena emshadweni wesibili?

D. Imibuzo maqondana neminyaka efanele yokushada

2.28 Ngabe ababambi beqhaza bayavuma ukuthi ukungafani phakathi kwe-*Marriage Act, Recognition of Customary Marriages* kanye *ne-the Civil Union Act* maqondana nokuthi iminyaka yokushada kumele ilungiswe?

2.29 Ngabe abaphenduli bayavuma ukuthi iNingizimu Afrika inesibopho sokulandela izindlela zomhlaba kanye nezesifunda ukwenza ukuthi iminyaka yokushada ifane kube yiminyaka eyi-18 ngaphandle kokuvunyelwa kwemvume yohlaka lwesithathu lwabazali, izinkantolo, noma yinoma yisiphi isikhulu ukuvimbela ukuthi izingane zishade noma zingene ebudlelwaneni zingashadanga?

E. Imibuzo maqondana nokunikeza isaziso noma izimfuneko zelayisense yomshado

2.32 Ngabe abaphenduli bayavumelana nokwethulwa kabusha kokunika isaziso kanye nokukhishwa kwamalayisense omshado eNingizimu Afrika?

2.33 Ngabe abaphenduli bayacabanga ngokuthi ukunika isaziso noma ukukhishwa kwelayisense yomshado kuzoba nomthelela ekubhekeni izimfuno zikahulumeni emishadweni eyenziwayo?

2.34 Uma impendulo ivuma, isaziso kumele sibe naluphi ulwazi?

F. Imibuzo maqondana nemisebenzi yezikhulu zokushada

2.41 Siyazi ukuthi i-*Marriage Act* kanye neminye imithetho idlulisele ezikhulwini kanye nezisebenzi okumaqondana nemishado. Ngabe abaphenduli bayakweseka ukuthi izikhulu noma abasebenzi babandakanyeke ekubungazweni kanye nasekubhalisweni kwanoma yimuphi umshado noma izinhlobo zemishado? Uma kungenjalo, ngabe abaphenduli baphakamisa indlela eyahlukile?

2.42 Uma abaphenduli bekweseka ukubandakanyeka kwezikhulu zemishado, ngabe yiziphi izimfuneko zokubandakanyeka kwazo?

2.43 Uma izikhulu zemishado kumele ziqhubeke nokubandakanyeka ekubungazweni kwemishado imisebenzi yazo kumele kube iyiphi: ukurekhoda umshado, ukusiza ngokubhaliswa komshado nanoma yini enye ukuhlinzeka ubufakazi bezinhloso zomthetho?

G. Imibuzo maqondana nokubhaliswa komshado

2.63 Sivezile ngenhla ukuthi i-DHA yeseka ukubhaliswa kwayo yonke imishado. Ngabe abaphenduli bayakweseka ukubhaliswa kwemishado?

2.64 Ngabe ukungaphumeleli ukubhalisa kufanele kube nomthelela ekubeni khona komshado?

2.65 Uma umshado ungaba khona ngaphandle kokubhaliswa, ngabe kumele kube nezindlela ezahlukile zokuqinisekisa ukuba khona komshado? Kungaba yiziphi lezo zindlela?

2.66 Ngabe kumele kube nesidingo ukuthi izinhlaka zombili emshadweni zibhalise umshado noma kumele kube wuhlaka olulodwa olukwazi ukubhalisa? Uma uhlaka olulodwa lukwazi ukubhalisa umshado, yiluphi ulwazi kanye ngezindlela ezifanele zokuvimbela ukubhaliswa kwemishado engekho?

2.67 Ngabe izinhlaka kumele zikwazi ukubhalisa imishado kunoma yiliphi izinga lomshado wazo? Ngabe yibuphi ubuhle kanye nobubi bokuvumela ukubhalisa nganoma yisiphi isikhathi ngaphambi komshado?

2.68 Ngabe ubudlelwano babantu abangashadanga kumele bubhaliswe ukuze abalingani bakwazi ukuba namalungelo omthetho noma ukubhalisa kumele kwenziwe nje ukuqinisekisa ukuba khona kobudlelwano? Noma ukubhalisa akumele kube yisidingo ebudlelwaneni babantu abangashadile?

2.69 Uma abantu abasebudlelwaneni abangashadanga kumele babhaliswe, yiluphi ulwazi oludingekayo futhi iyiphi indlela efanele yokubhalisa?

2.70 Uma ukubhaliswa kwabantu abasebudlelwaneni abangashadanga kwenziwa ukufakazela ukuba khona kobudlelwano, yiziphi ezinye izindlela okumele zibe khona ukuqinisekisa ukuba khona kobudlelwano obunjalo futhi yibuphi ubufakazi okumele buthathwe njengobufakazi bobudlelwane obunjalo?

2.71 Ngabe zikhona ezinye izinkinga maqondana nokubhaliswa kwemishado abaphenduli abafisa ukukhuluma ngazo ukuthi ziphinde zibhekwe?

H. Imibuzo maqondana nemicimbi yemishado noma indlela evunyelwe yomshado

2.77 Esicelweni se-DHA salolu phenyo kushiwo ukuthi umbuso akumele unake imikhuba yenkolo noma yesiko ukuthi yenziwa kanjani emicimbini yemishado. I-*Marriage Act* kanye ne-*Civil Union Act* inquma indlela okumele isetshenziswe emicimbini ethile yemishado. Ngabe abaphenduli bayavumelana nalokho futhi uma bengavumelani, yisiphi isizathu?

2.78 Ngabe abaphenduli bayakwazi ukuthi indlela yokushada enqunyiwe inomthelela nganoma iyiphi indlela yokuthi umshado kumele wenziwe kanjani, uma kunjalo yisiphi isizathu?

I. Imibuzo maqondana nemiphumela yemishado

2.86 Uma kukhona ukwesekwa komthetho womushado owodwa noma umthetho wemishado eyahlukene, kumele kuhlinzeke ini maqondana nempahla yomshado futhi imuphi umthelela

onawo emthethweni okhona?

2.87 Yimiphi imibono yabaphenduli maqondana nemiphumela yayo yonke imishado kanye nobudlelwane babantu abangashadile okulawulwa umthetho owodwa noma umthetho wemishado eyahlukene?

2.88 Abaphenduli bayacelwa ukuthi baphinde baveze ukuthi ngabe zikhona ezinye izinto maqondana nempahla yomshado okumele ibhekwe yi-SALRC.

J. Imibuzo maqondana nokondliwa komlingani

2.100 Kuke kwaphakanyiswa ngaphambilini ukuthi kwaziswe ukondliwa komlingani esimeni lapho kungekho umshado okhona kanye nomsebenzi owaziswa ngumthetho onika umsebenzi wokukhokha isondlo. Ngabe umthetho kumele wazise umsebenzi ngokomthetho wokondlana phakathi kwabalingani abangashadile?

2.101 Ngabe umsebenzi wokondla udlulele esimeni lapho umlingani oyedwa ebudlelwaneni babantu abangashadile esebudlelwaneni engashadile noma emshadweni? I-SALRC izobona umbono owenziwe abaphenduli ocwaningweni olufanele, kungaba ukubuyekezwa kwesondlo noma umthetho wempahla yomshado.

K. Umbuzo maqondana nezivumelwano zangaphambi komshado kanye namandla enkantolo okwenza imiyalelo enobulungiswa

2.107 Ngabe umthetho womshado phakathi kwabantu ababili kumele wenze imihlinzeko yokwenziwa, yokubhaliswa kanye nokusetshenziswa kwezivumelwano zangaphambi komshado?

L. Umbuzo maqondana nokuqedwa kobudlelwano ngaphandle kwenkantolo noma enye indlela yokusombulula imibango maqondana nezindaba zemindeni

2.114 Njengokuba i-SALRC yenza ucwaningo oluqondene nokusombululwa kwemibango yemindeni kuyacaca ukuthi i-SALRC ngeke iyiphinde imizamo yayo kodwa kumele isebenzise izinsiza zayo ngendlela efanele. Uma abaphenduli benemibono yokuthi izindlela ezahlukile zokusombulula zingasetshenziswa kanjani ukusombulula imibango yomthetho womndeni, bayacelwa ukuthi bahambiwse imibono yabo ku-SALRC ukuze ithathwe njengengxenye yolunye ucwaningo olwenziwayo yi-SALRC. Imibono izothathwa kulolo cwaningo ekuvezeni umbono womphenduli.

M. Umbuzo maqondana nemishado engekho emthethweni

2.120 Abaphenduli bayacelwa ukuthi babike imibono ukuthi ingavinjelwa kanjani imishado engekho emthethweni futhi kungabhekanwa kanjani nayo uma isikhona?