

## **UMHLAHLANDLELA WOKULAWULA UKUPHATHA KWESICI SEKHADI LAMAPHUZU LE-B-BBEE**

### **1. Singobani?**

IKhomishani Abantu abaNyama Yokuhlonyiswa Okubanzi Kwezomnotho Kwabantu Abamnyama (“iKhonishanai ye-B-BBEE”) isungulwe njengenhlango engaphakathi kokuphatha koMnyango Wezohwebo, Izimboni Nokuncintisana (“ i-dtic”) ngoMthetho Wokuhlonyiswa Okubanzi Kwabamnyama Kwezomnotho wama-53 wonyaka we-2003 njengoba uchitshiyelwe uMthetho Wokuhlonyiswa Okubanzi Kwezomnotho Kwabantu Abamnyama wama-46 wonyaka we-2013 (“uMthetho we-B-BBEE”). IKhomishana ye-B-BBEE igunyazwe, phakathi kokunye, ukwengamela, ukuqapha kanye nokukhuthaza ukulandelwa koMthetho we-B-BBEE. Amandla anjengalawa asetshenziswa ngaphandle kokwesaba, ukuchema noma ukubandlulula futhi ngokuhambisana namagugu nezimiso ezishiwo esahlukweni se-195 soMthethosisekelo.

### **2. Kuyini Ukulawulwa Kokuphatha?**

Ukulawulwa Kokuphatha kuyisici sekhadi lamaphuzu le-B-BBEE njengoba kuchazwe iMithetho Echitshiyelwe Yokuziphatha Okuhle futhi kuhloswe ngakho ukukhulisa ukumeleleka kwabantu Abamnyama ezikhundleni ezibalulekile zobuholi. Ukulawulwa Kokuphatha kugxile ekubandakanyweni kanye nokwehlukahlukana kanye nokubamba iqhaza kwangempela ekuthathweni kwezinqumo ebhodini, emazingeni okuphatha aphezulu kanye nokusebenza kwezinhlangano, kanye nokulawulwa kwempahla ngabantu abaNyama. Ukulawulwa Kokuphatha kukala izinga abantu abaNyama abameleleke ngalo ebhodini, kubaphathi, kwabangebona abaphathi, emazingeni aphezulu ukuya kwamancane phakathi kwezinhlangano, akuhloli nje kuphela ukuhlukahluka kwethimba labaholi kodwa futhi kuqinisekisa ukuthi abantu abamnyama bamelwe ngokulinganayo ezikhundleni zokuphatha ngokuthatha isiqondiso kulokho okuhlosiwe kwaBantu Abasebenzayo Emnothweni (i-EAP), kanye nokwandisa izinga lokumelwa kwabesifazane.

Izinkomba zokuhlonyiswa okuLawulwa Kokuphatha ikakhulukazi zikala ukumelwa kwabantu abaNyama kulokhu okulandelayo:

- Ukubamba iqhaza kumabhodi, okubandakanya abaqondisi abakhulu
- Abanye abaphathi abakhulu
- Ukubamba iqhaza kwabaphathi abakhulu
- Ukubamba iqhaza kwabaphathi abaphakathi
- Ukubamba iqhaza kwabaphathi abancane
- Abasebenzi abaphila nokukhubazeka

Ithebula elingezansi libeka imininingwane Yekhadi Lamaphuzu Lokulawulwa Kokuphatha:

Inkomba	Amaphuzu esisindo	Okuqondwe ukuthotshelwa komthetho
<b>Ukubamba iqhaza Kwibhodi</b>		
Amalungelo okuvota asetshenziswa Abantu abaNyama amalungu ebhodi labantu abaNyama njengephesenti lawo wonke amalungu ebhodi	2	ama-50%
Amalungelo okuvota asetshenziswa abesifazane abamalungu ebhodi labantu abaNyama njengephesenti lawo wonke amalungu ebhodi	1	ama-25%
Abaqondisi abakhulu abaNyama njengephesenti labo bonke abaqondisi abakhulu	2	ama-50%
Abantu abaNyama besifazane abangabaqondisi abakhulu njengephesenti labo bonke abaqondisi abakhulu	1	ama-25%
<b>Abanye Abaphathi Abakhulu:</b>		
Abaphathi Abakhulu abaNyama njengephesenti	2	ama-60%

labo Bonke Abaqondisi Abakhulu		
Abesifazane Abangabaphathi Abakhulu AbaMnyama njengephesenti labo bonke Abanye Abaqondisi Abakhulu	1	ama-30%
<b>Abaphathi Abakhulu:</b>		
Abasebenzi Abamnyama Kubaphathi Abaphezulu njengephesenti labo bonke Abaphathi Abakhulu	2	ama-60%
Abasebenzi Besifazane Abamnyama Kubaphathi Abaphezulu njengephesenti labo bonke Abaphathi Abakhulu	1	ama-30%
<b>Abaphathi abaphakathi:</b>		
Abasebenzi Abamnyama Kubaphathi Abaphakathi njengephesenti labo bonke Abaphathi Abakhulu	2	ama-75%
Abasebenzi Besifazane Abamnyama Kubaphathi Abaphezulu njengephesenti labo bonke Abaphathi Abaphezulu	1	ama-38%
<b>Abaphathi Abancane:</b>		
Abasebenzi Abamnyama Kubaphathi Abancane njengephesenti labo bonke Abaphathi Abancane	1	ama-88%
Abasebenzi Besifazane Abamnyama Kubaphathi Abancane njengephesenti labo bonke Abaphathi Abancane	1	ama-44%
<b>Abasebenzi abaphila nokukhubazeka</b>		
Abantu abamnyama Abasebenzi abaphila nokukhubazeka njengephesenti labo bonke abasebenzi	2	ama-2%

### **3. Izici ezibalulekile kwiSici Sokulawulwa Kokuphatha**

#### **3.1 Ukumelwa Ebuholini Obuphezulu**

**Abaqondisi Abaphezulu Abamnyama:** Ukuqashelwa ngaphansi kwesici Sokulawula Kokuphatha kunikezwa maqondana nabantu abamnyama abasebenza njengabaqondisi abakhulu ebhodini lenkampani, njengoba lokhu kumela izinga eliphezulu lokuthatha izinqumo nobuholi ngaphakathi kwinhlangano. Isibonelo, uma inkampani iqoka umuntu oMnyama njengeSikhulu Esiphezulu Sezezimali (i-CFO) noma iSikhulu Esiphethe (i-CEO), lokhu kunikela ngokuqondile kwiphuzu lenkampani le-B-BBEE ngokokuLawulwa Kokuphatha. Abaqondisi Abaphezulu Abamnyama badlala indima engaphezu kokuthotshelwa nje komthetho kuphela, kodwa baletha imibono nemiqondo eyingqayizivele, ebalulekile ekubhekaneni nezidingo zamakhasimende ahlukahlukene nababambiqhaza abehlukahlukene. Ngokuqoka abantu abamnyama abafanelekayo kulezi zindima ezinomthelela, izinkampani zifaka isandla oququkweni ngenkathi futhi zithuthukisa ukwengamela kwazo kanye nokuhleleka kwamasu okubekwe eqhulwini kuzwelonke.

**Abaqondisi Abamnyama Abangebona Abaphathi Abakhulu:** Ukubandakanywa kwaBaqondisi Abamnyama Abangebona Abaphathi ngokwesici Sokulawulwa Kokuphathi kubalulekile ukuze kuqiniseke ukuhlukahlukana ekuthathweni kwezinqumo ezibalulekile kanye nokuqinisekisa ukuthi izinhlaka zokwengamela zibonisa izibalo zabantu baseNingizimu Afrika. Abangebona Abaphathi Abakhulu banegalelo ekuqapheni okuzimele, imibono engachemile, kanye nolwazi olubalulekile ezinqumweni zebhodi ngaphandle kokubamba iqhaza emisebenzini yansuku zonke. Ukukhuthaza ukuqokwa kwabantu abamnyama kulezi zindima kuqinisekisa imibono ehlukahlukene ezingxoxweni ezimayelana namasu esikhathi eside, ukulawulwa kwezinhlekelele, kanye nomthwalo wemfanelo womphakathi wezinkampani. Isibonelo, inhlangano eqoka umqondisi oMnyama ongeyena umphathi omkhulu onesipiliyoni sokuxoxisana nomphakathi okusimeme angathuthukisa imizamo yendawo yayo, yezenhlalo kanye nokwengamela ngenkathi ethuthukisa amaphuzu ayo e-B-BBEE. Lokhu akugcini nje ngokuqondanisa inkampani nezinhloso zoguquko kodwa futhi kuyibeka njengenhlangano enesibopho emphakathini eyazisa ukubandakanywa

kwabo bonke abantu nokusungulwa kwezinto ezintsha ezinhlelweni zayo zokuthatha izinqumo.

**Ubuholi Babesifazane Abamnyama:** Isici Sokulawulwa Kokuphatha sibeka isisindo esithuthukisiwe ekumelweni kwabesifazane Abamnyama ezindimeni zobuholi, okubonisa ukuzinikela okukhulu ekukhuthazeni ukulingana kwakho kokubili ubuhlanga nobulili. Ngokunikeza amaphuzu angeziwe ezinkampanini ezibeka eqhulwini ukuqokwa kwabesifazane abamnyama emazingeni aphezulu, abangaphethe, nabaphathi abakhulu, uMthetho we-B-BBEE uhlose ukubhekana nokuhlukahluka kobuhlanga nobulili noma ukubonakaliswa kokungalingani. Lokhu kugxila kuqinisekisa ukuthi abesifazane abamnyama, abavame ukumelwa kancane ebuholini, banokufinyelela ezikhundleni zokuthatha izinqumo kanye namathuba okuba nomthelela wamasu enhlanganweni. Isibonelo, inkampani eqoka owesifazane omnyama njengoMphathi Omkhulu Womsebenzi (i-COO) ayigcini nje ngokuzuzisa imibono ebalulekile yobuholi kodwa futhi ithola amaphuzu angeziwe ngokwesici Sokulawulwa Kokuphatha. Lokhu kuqokwa kugqamisa ukuzibophezela kwenkampani oququkweni ngenkathi isebenza njengesibonelo esisebenzayo sokuthi ukwehlukahlukana kobuholi kungaqhuba kanjani ukwenziwa kokusha futhi nokuthuthukiswa kwesithunzi senkampani.

### **3.2 Abaphathi Abakhulu, Abaphakathi Nabancane:**

Ngaphansi koKulawulwa Kokuphatha, amaphuzu anikezwa izinkampani ezifeza ukumeleleka kwabantu abamnyama emazingeni aphezulu, Aphakathi Namancane Okuphatha, ngokubona ukubaluleka kokwehlukahlukana ekuthathweni kwezinqumo zokusebenza nezamasu. Lesi sabelo sigqogquzela izinhlangano ukuthi zikhuthaze ochwepheshe abamnyama emisebenzini yobuholi njengezinhloko zeminyango, abaholi bamaqembu, nabaphathi abasebenzayo. Ngokugxila kula mazinga okuphatha, uMthetho we-B-BBEE uqinisekisa ukuthi uguquko alugcini nje ezikhundleni eziphezulu kodwa lwenzeka kuzo zonke izigaba zenhlangano. Isibonelo, inkampani eqoka ochwepheshe abamnyama njengabaphathi abakhulu abengamele ukusebenza kwesifunda noma abaphathi abaphakathi nabancane bangathuthukisa kokubili ukusebenza kahle kwayo kanye namaphuzu ayo e-B-BBEE. Le ndlela isiza izinkampani ukuthi zakhe umgudu wamathalente ahlukehlukehene alungele

ukuthuthukela ebuholini obuphezulu, akhuthaza ukubandakanywa kwabo bonke abantu kanye nakha izinhloko zokuphatha ezibonisa kangcono izibalo zabantu baseNingizimu Afrika.

#### **4. Ukuqondanisa Ukuthuthukiswa Kwamakhono Nokulawulwa Kokuphatha**

Isici sokuthuthukiswa kwamakhono sidlala indima ebalulekile ekuthuthukiseni abasebenzi abamnyama ezikhundleni zokuphatha, ikakhulukazi ngaphakathi kohlaka lwezinqubomgomo zoguquko. Lokhu kuqondanisa kuqinisekisa ukuthi izinhlangano zisebenzisa izinhlelo ezihlelekile zokuqeqesha, zokukhulisa amakhono, zokufundisa ngokusekelwa emsebenzini kanye nokuthuthukiswa kwemisebenzi eyakhelwe ukubhekana negebe lamakhono kubasebenzi abamnyama.

Ngokuqeqeshwa okusebenzayo kwamakhono kanye nokuqapha inqubekela phambili yalezi zinhlelo, izinkampani zingaqinisekisa ukuthotshelwa kwezinhloso zokulingana kanye nokuthuthukiswa komgudu oqinile wamathalente oxhumene nokulandelana kwabo kanye nezinhlelo zokugcinwa kwabo. Ngokwenza kube lula ukufinyelela kumathuba okuqeqeshwa ekhwalithi ephezulu nokuhlanganisa abasebenzi nabeluleki abanolwazi, izinhlangano zakha indawo evumayo lapho abasebenzi abamnyama bengathola khona ukufaneleka, amakhono obuholi, nokuzethemba okudingekayo ukuze bakhuphukele ezindimeni zokuphatha. Lokhu akusekeli nje ukukhula komsebenzi ngamunye kodwa kuphinde kuqhubekisele phambili ukuhlukahlukana kwenhlangano kanye nokubandakanywa kobuholi.

#### **5. Ukumelwa Kwentsha kanye Nabantu Abaphila Nokukhubazeka**

Imithetho Yokuziphatha Okuhle yamukela intsha kanye nabantu abakhubazekile njengamaqembu aqokiwe, futhi iSici Sokulawula Ukuphatha sibalulekile ekwandiseni ukumelwa kwentsha nabantu abaphila Nokukhubazeka kuwo wonke amazanga okuphatha, ngokufundiswa ngokwelulekwa emsebenzini, ukuqeqeshelwa ubuholi, nokuhlelwa kokulandelana. Ngokwenza kanjena, izinkampani ngeke zigcine nje ngokuthuthukisa ukuncintisana kwazo kodwa futhi zizofaka isandla ekuguquleni umnotho ngokuphusile, ukubandakanywa kanye nokuqashwa kwawo wonke umuntu.

Lezi zinhlelo zisiza ukuhlukanisa amaqembu abaholi, ukubhekana nokungalingani okungokomlando, kanye nokwakha umbutho wabasebenzi obandakanya wonke umuntu, ekugcineni kuzuzise inhlango nomphakathi wonkana.

## **6. Ukuthotshelwa okulula komthetho wamabhizinisi**

Isici Sokulawulwa Kokuphatha senziwe ngcono ukuze kwenziwe ukuthotshelwa komthetho kusebenze kangcono:

- **Okuhlosiwe Okucacile:** Izinhloso ezifinyelelekayo zokumelwa kwabaMnyama ezingeni ngalinye lokuphatha.
- **Ukuqinisekisa Ngokusebenzisa Izindlela Zokusebenza Ezisheshayo Nezilula:** Ukuthotshelwa komthetho kuqinisekiswa ukusetshenziswa kwemibiko yokulingana yilezo zinhlango ezidingeka ukuba ziyilethe ngokoMthetho Wokulingana Emsebenzini, kanye neminye imibhalo esemthethweni.
- **Ukulinganisa Okunesisindo:** Amabhizinisi manje angakwazi ukuhlonza kalula izindawo okugxilwa kuzo (isib., abesifazane abamnyama nabaphathi abaphezulu) ukuze zithole amaphuzu amaningi.

## **7. Zingafeza kanjani izinkampani/izikhungo izici zoKulawulwa Kokuphatha**

**7.1 Ukuhlaziywa Kwamagebe:** Ukuhlola ukuhlukahluka kwethimba labaphathi kubandakanya ukuhlola ukwakheka kwabantu kanye nolwazi lweqembu ukuze kuhlonzwe amaqembu angamelelekile kahle. Lokhu kuhlola kufanele kucabangele izici ezifana nobulili, uhlanga, iminyaka yobudala, ubuzwe, imfundo, umlando wokufaneleka, ngisho nokuhlukahluka kwengqondo (isib. izindlela ezihlukene zokuxazulula izinkinga). Ithimba labaphathi elihlukahlukene likhuthaza ukwakhiwa kokusha, lithuthukisa ukuthathwa kwezinqumo, futhi libonise kangcono amakhasimende ahlukahlukene noma umphakathi inhlango ewusebenzelayo. Isibonelo, uma ithimba labaphathi benkampani lakhiwe ikakhulukazi abesilisa asebekhulile abanomlando wezemfundo ofanayo, lingase lintule imibono ekhanga abasebenzi abasebancane, abesifazane, noma abantu abavela ezizindeni ezihlukene

zamasiko noma zezenhlalo-mnotho. Ukubhekana nalokhu kungalingani kungabandakanya imizamo ehlosiwe yokuqasha, izinhlelo zokuthuthukiswa kobuholi bamaqembu angamelwe kahle, nokwakha izinqubomgomo ezibandakanya wonke umuntu ukuze kugcinwe amathalente ahlukahlukene. Isibonelo esisebenzayo inkampani yoBuchwepheshe Bolwazi (i-IT) ebona ukuthi ayinabo abesifazane ezindimeni zobuholi, kungayenza isungule izinhlelo zokweluleka emsebenzini abasebenzi besifazane futhi izibekele izinhloso zokuhlukana ngokubaqasha ezikhundleni eziphezulu.

**7.2 Ukwakha Umgudu Wamathalente:** Ukutshala imali ezinhlelweni ezinzelwe zokufundisa ngokwelulekwa emsebenzini kanye nokwakha izinhlelo zobuholi zabasebenzi abaNyama kuwuhlelo olubalulekile oluhloselwe ukubhekana nezithiyo ezingokomlando kanye nokukhuthaza amathuba alinganayo okuthuthukiswa kwemisebenzi. Lezi zinhlelo zingasiza ekwakheni ukuzethemba, amakhono, namanethiwekhi adingekayo ukuze abasebenzi abaNyama baphumelele ezindimeni zobuholi. Ukumatanisa abasebenzi abaNyama nabeluleki abanolwazi kanye nokuhlinzeka ngamathuba entuthuko aklanyiwe, izinhlangano zingaqinisekisa ukuthi izisebenzi eziNyama zilungiselelwa izikhundla zobuholi zesikhathi esizayo, ngenkathi zikhuthaza isiko lendawo lokusebenza elibandakanya wonke umuntu nelisekelayo. Isibonelo, inkampani enkulu ingase yethule uhlelo lobuholi ikakhulukazi olwakhelwe abasebenzi abaNyama, olunikeza ukuqeqeshwa bobuholi bamasu, amakhono okuphatha, kanye nokubheka ukuhlukahluka kwezinhlelo zenhlangano. Lokhu kungahle kusekelwe uhlelo lokufundisa ngokweluleka emsebenzini ngabaphathi abaphezulu abahlinzeka ngokusiza mayelana nokuqhubeka komsebenzi, ukunikeza ulwazi mayelana nokunqoba izinselele, futhi nokusekela ukukhula kochwepheshe kwabaqeqeshi bayo. Izinyathelo ezinjengalezi azigcini nje ngokusekela ukuthuthukiswa komuntu ngamunye kodwa futhi zinomthelela ekwahlukeni okukhulu nokumeleleka ebuholini kuyo yonke inhlangano.

## **8. Ukubaluleka Kwesici Sokulawulwa Kokuphatha se-B-BBEE**

**Ukukhula Kwebhizinisi:** Amaqembu okuphatha ahlukahlukene aletha imibono emisha nezixazululo ezintsha.

**Isibopho Somphakathi:** Ukuba negalelo oguqukweni leNingizimu Afrika lwezonzhlalo nomnotho.

**Ukunikezwa kwamaphuzu e-B-BBEE Scoring:** Ukufeza amaphuzu okuLawulwa Kokuphatha isimo sonke se-B-BBEE, njll.

## **9. Yini engathathwa njengesici Sokulawulwa Abaphathi ngokoMthetho we-B-BBEE**

Ukulawulwa Kokuphatha ngokoMthetho we-B-BBEE angeke kubandakanye izimo lapho:

Izindima zokuphatha ezingenalo ithonya langempela: uma abantu abaNyama beqokelwa ezikhundleni eziphezulu kodwa bengenawo amandla angempela okuthatha izinqumo noma okuthonya kwamasu, lokhu akusho ukulawulwa kwangempela kokuphatha.

Ukuntuleka kokubandakanyeka ekusebenzeni: uma abaphathi abaNyama befakwa ezinhlakeni zobuholi ukuze bafeze izidingo zokuthotshelwa komthetho kuphela kodwa bangabandakanywa emisebenzini yokuphatha yansuku zonke kanye nasekuthathweni kwezinqumo ezibalulekile, lokhu akubalwa njengokulawulwa kokuphatha okufanele.

Ukuqokwa ngaphandle kwezibopho eziphathisiwe: uma abaphathi abaNyama beqokwa kodwa izindima zabo zintula izibopho ezichazwe ngokucacile, ukugunyazwa, noma ukuzimela eminyangweni yabo, kubukela phansi inhloso yoguquko olufanele.

Imikhuba yokubeka abantu njengabaholi: Uma inkampani yethula ngokungafanele izinga lokubamba iqhaza kwabantu abaNyama ekuphatheni (isib., ukufaka ohlwini abasebenzi abaNyama ezindimeni zokuphatha emaphepheni ngaphandle kokubanika amandla angempela), lokhu kuthathwa njengokwephula umthetho we-B-BBEE.

Ukukhishwa ezinkundleni zokutha izinqumo: Ngisho noma abaphathi abaNyama bephethe izikhundla eziphezulu, kodwa bekhishwa ngendlela ehlelekile ezindleni ezibalulekile zokuthathwa kwezinqumo, ukuba khona kwabo akusho uKulawulwa Kokuphatha kwangempela.

## **10. Iqhaza Lekhomishana ye-B-BBEE Ekusizeni Izinhlangano Ukuthobela Ukulawulwa Kokuphatha**

IKhomishana ye-B-BBEE idlala indima ebalulekile ekuqinisekiseni ukuthotshelwa kwesici sokulawula soMthetho we-B-BBEE. Lokhu iKhomishana ikwenza ngokunikeza isiqondiso, ukuqapha ukuthotshelwa kwemithetho, ukuphenya ukungathotshelwa kwemithetho, kanye nokuphoqelela izenzo zokulungisa. Ngezansi izindlela ezibalulekile iKhomishini esiza ngazo amabhizinisi:

### **10.1 Ukunikeza iMihlahlandlela Nemibono Yokweluleka**

- IKhomishana ye-B-BBEE inikeza imihlahlandlela, amanothi achazayo, kanye nemibono yokweluleka ukuze isize amabhizinisi aqonde indlela yokusebenzisa kahle isici sokulawula.
- Icacisa izidingo zangempela zokubamba iqhaza ukuze kuvinjelwe amathokheni kanye nemikhuba yokubeka njengabanikazi ekuqokeni abaphathi babantu abaNyama.

### **10.2. Ukuphenya Imikhuba Yokubeka Njengabanikazi**

- IKhomishana ye-B-BBEE inegunya lokuphenya izikhalazo eziphathelene nezimangalo ze-B-BBEE zomgunyathi, ukubekwa njebanikazi, kanye nokuqokwa kwamathokheni lapho izikhulu eziNyama zinengxenywe enganele noma zingahlanganyeli nhlobo.
- Uma inkampani itholwa inecala lokuqamba amanga ngokubeka njengabanikazi noma

ukuhlanekezela amaqiniso, iKhomishana ye-B-BBEE inganswinya noma income izinyathelo zomthetho.

### **10.3 Ukunikeza Ukuqwashisa ngokuhlonyiswa Nokuqeqeshwa**

- IKhomishana ye-B-BBEE ihlinzeka ngemihlangano yokucobelelana ngolwazi, ukuqeqeshwa, kanye nokuxoxisana nababambiqhaza ukusiza amabhizinisi aqonde futhi asebenzise ukulawulwa kokuphatha ngendlela efanele.
- Le mihlangano isiza izinkampani ngokuhlela ukuthi zibabandakanya kanjani abaphathi abaMnyama ezindimeni zokuthathwa kwezinqumo ngempumelelo kunokuba zibaqoke ukuze kuthotshelwe imithetho kuphela.

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