

UBULUNGISWA BOKUBUYISANA

Indlela eya epumelelweni



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



Incwajana le imumethe ilwazi elisendlalelo ngokuphathelene nobulungiswa bokubuyisana. Incwajana le ingasetjenziswa ngibo boke abantu ukuze bazwisise bonyana buyini ubulungiswa bokubuyisana; amagugu, imigomo amagadango wokusebenza kwawo kunye nenzuzo yokuwusebenzisa ehlelweni lobulungiswa kwezobulelesi.

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1. ISINGENISO

iSewula Afrika njengezinye iinarha ephasini isasebenzisa ihlelo lezobulungiswa le-retributive. Ihlelo lokusolels ngilo elisasebenza khulu emakhono lapho umsolwa aphekwa kkhona ngemibuzo lapho kungekho ukukhathazeka ngongazimbi.

Isikhathi sekululeko saletha iKhomitjhana yamaQiniso nokuBuyisana (Truth and Reconciliation Commission) i-TRC ukuze iqalane nemisebenzi yakade yezobulelesi ngendlela yokuzibandakanya kunye nokubuyisana. Kilekambiso kugqine kuvele iFilosofi yoBulungiswa bokubuyisela ebujameni okuyinto yangaphandle kwenarha ngokuya ngokwe-Roman Dutch Law lokho gade kuyingcnyene yehlelo lezobulungiswa lbendabuko ye-Afrika.

2. ISENDLALELO SOBULUNGISWA BOKUBUYISANA

Ngokuqalana neenselela ihlelo lezobulungiswa kobulelesi begodu nokutjhugululwa kokulawulwa kobulungiswa, i-Justice Crime Prevention and Security Cluster (JCPS) yamukele indlela yoBulungiswa bokubuyisana ngezizathu ezimbalwa okufaka hlangana iphuzu lokobana zoBulungiswa bokubuyisana zisebenzisa iindlela zendabuko zokusombulula ubulelesi, ithathela ekambisweni yangaphakathi neyangaphandle kwehlelo lezobulungiswa lobulelesi, kufaka hlangana iindlela zendabuko zokusombulula ubulungiswa i- (“non-state forms of ordering and justice”).

Kukhona okufanako hlangana noBulungiswa bokubuyisana kunye nobulungiswa obenziwa ma-Afrika emakhotho womphakathi nawendabuko okuthole ukuthabelwa eendaweni zemadorobheni kumaforamu afana namakomiti weentrada kunye namakhotho wabantu. Kilokho-ke, imithetho yamacala kunye nendlela kwenzeka ngakhona kuqinisekisa imigomo yokuhlonipha isithunzi somuntu kunye namahlelo anjengetjhuguluko (nanyana ifakwe ngokungemthetho ehlelweni lobulungiswa bezobulelesi), kusize umleyo womthethomgomo wezomthetho wehlelo lezobulungiswa.

Ihlelo lokuhlululisa lanjenganje, elilihlelo lokujezisa abantu ngemilandu abayenzileko kubonakala kunemiphumela emincani, ngakho-ke kufuneka indlela eyahlukileko yokuqalana nemilandu.

3. BUYINI UBULUNGISWA BOKUBUYISANA?

UBulungiswa bokubuyisana kuyindlela yezobulungiswa enqophe ukufaka hlangana iinqhema ezinombango kunye nalabo abathintwa bubelesi lobo (abongazimbi, izelelesi, imindeni ethintekako kunye namalunga womphakathi) ukuze kutholakale isenzo esilimazako ngokubambisana, iimfuneko kunye neembopho ngokwamukela ukuziphendulela, ukubuyelana, nokuthatha amagadango wokuvikela ukubuyeleleka kwesenzeko nokuthuthukisa ukucolelana..

UBulungiswa bokubuyisana bubona ubulelesi njengesenzo manqophana nongazimbi bese iqalela ukulungisa okoniwe sisephulamthetho emphakathini nakungazimbi. Ikholelwa bonyana iselesi sitlhoga irhelebho begodu sifuna ukuboniswa bonyana kumele sitjhuguluke kuphi ukuze singasona esikhathini esizako.

4. UYINI UMEHLUKO PHAKATHI KWENDELA YEKAMBISO YOBULUNGISWA EJAYELEKILEKO KUNYE NEYOBULUNGISWA BOKUBUYISANA?

- Ngokwendlela yekambiso yezoBulungiswa boMphakathi kunye nobulelesi bokungaziPhathikuhle, ungazimbi kunye nesephulamthetho bathathwa njengamanaba, ngalokho-ke bafanele bathule ngesikhathi kuthathwa iinqunto eziqakathekileko ngilabo abafaneleko (amajaji, abameli, abasenzi bezehlalakuhle, abasebenzi bemajele nabanye).
- Ngendlela yobulungiswa bokubuyisana, ungazimbi kunye neselelezi bayingcenyehlelo / yendlela yekambiso begodu neenqunto eziqakathekileko ezithethwako zidzimelele kibo.

5. AYINI AMAGUGU KUNYE NEKAMBISOLAWULO YOBULUNGISWA BOKUBUYISANA?

1. Indlela yekambiso yoBulungiswa bokubuyisana kumele ikhambisane nomthetho obusako, imigomo yamalungelo wobuntu kunye namalungelo anikelwe kuMThethosisekelo weSewula Afrika.

2. UBulungiswa bokubuyisana kumele buthuthukise isithunzi sabongazimbi kunye nezephulamthetho, begodu uqinisekise bonyana akunabandlululo namkha ipatho edlula yomunye.
3. Zoke iinqhema ezibandakanyekako kumele zinikelwe ilwazi elipheleleko lomnqopho wekambiso, amalungelo wabo asekambisweni kunye nemiphumela engabakhona kileyo kambiso.
4. Indlela yekambiso yoBulungiswa bokubuyisana kumele ifake hlangana amalungiselelo wababandakanyekako ekambisweni kunye nemahlelweni, kufaka hlangana abajameli bezomthetho. .
5. Zoke iinqhema ezibandakanyekako kumele zizwisise kuhle bonyana bangatsomuka ekambisweni esinye nesinye isikhathi.
6. Zoke iinqhema ezibandakanyekako kumele banikelwe isikhathi esifaneleko ukuze baqale abangakukhetha, nangabe kuhlangozwa ukusetjenziswa koBulungiswa bokubuyisana.
7. Ngokuqala indlela yekambiso yoBulungiswa bokubuyisana ingasetjenziswa esigabeni esinye nesinye sehlelo lobulungiswa bobelelesi, ngokuqalelela khulu iimfuneko zehlelo lokwelulekwa, isivumelwano sesigwebo nesesibawo, ikambiso yangaphambi kwesigwebo, njenge ngcenyane yesigwebo, kunye nengcenyane yekambiso yokuhlanganyela ngobutjha, kufaka hlangana iparoli.
8. Ukuzibandakanya endleleni yekambiso yoBulungiswa bokubuyisana kumele kube kuzithandela kwabo boke ababandakanyekako, kufaka hlangana nongazimbi.
9. Zoke iinqhema ezibandakanyekako akukameli zikatelelewe ngesivumelwano esithileko.
10. Indlela yekambiso yoBulungiswa bokubuyisana kumele inikele boke ababandakanyekako ithuba elilinganako lokuzibandakanya.
11. Indlela yekambiso yoBulungiswa bokubuyisana kumele ifane begodu ingathathi ihlangothi.
12. Ngokuvamileko, Indlela yekambiso yoBulungiswa bokubuyisana kumele ibe yifihlo. Zoke iinqhema ezibandakanyekako zingathatha iinqunto basazi abakwenzako, ngokuzwana, kube yifihlo yabo.
13. Abongazimbi kunye nezephulamthetho kumele bavunyelwe ukuletha abantu abangabasekela nakuzokuhlangukwa nangabe lokho angekhe kuthikameze amalungelo kunye nokuphepha kwesiqhema esinye nesinye.
14. Abongazimbi kunye nezephulamthetho kumele bavunyelwe ukuthola

- iseluleko ngezomthetho kunanyana ngiliphi izinga lecala.
15. ukubandakanyeka kwabantwana nokubakhona kwabo kumele kube nemvumo evela kubabelethi namkha umtlhogomeli, namkha kube khona umuntu omdala onesibopho kunye negunya lokuvikela amalungelo kunye nekareko yomntwana.
 16. nawusebenza ngomntwana, kumele kutjhejwe kobanyana umntwana uyazwisisa ikambisolawulo begodu akwazi ukuzibandakanyaka ngepumelelo.
 17. Indlela yekambiso yoBulungiswa bokubuyisana kumele ithuthukise ukwelapheka nobuyisela ebujameni.
 18. Iimvumelwano zokuqalelelwa koBulungiswa bokubuyisana akukameli buhlale bungalinganiswa nomanakalo owenzakeleko.
 19. Umqopho wendlela yekambiso yoBulungiswa bokubuyisana kumele kube kuvikela ukwephula umthetho ngesikhathi esizako.
 20. Amahlelo woBulungiswa bokubuyisana kumele aqalane nomonakalo, iindingo kunye neembopho.
 21. Indlela yekambiso yoBulungiswa bokubuyisana kumele ibe nokuzwelana, ukutjengisa ukuzisola, ukubawa ukulitjalelwa, ukucolelwa kunye nesirhawu, kodwana akukameli bonyana ukatelele bona izinto lezi zenzeke.
 22. Amahlelo woBulungiswa bokubuyisana kumele aqinisekise bonyana izephulamthetho ziyazilandela iimbopho zawo ezibangelwe ukwephula kwabo umthetho.
 23. Indlela yekambiso yoBulungiswa bokubuyisana kumele ikhambisane namasiko weenqhema ezibandakanyekako.
 24. Boke ababandakanyekako abaphathelene nokukghonakalisa indlela yekambiso yoBulungiswa bokubuyisana kumele babandulwe ngokufaneleko namkha babe nelemuko.
 25. Amahlelo woBulungiswa bokubuyisana kumele abe nomtologi obanduliweko nakufunekako.
 26. Amahlelo wokubuyisa kumele akhiwe ngokubonisana nabongazimbi kunye nezephulamthetho .
 27. Isidingo sokuphepha komphakathi kumele kuqalelelwe ngokuya ngokwendlela yekambiso yoBulungiswa bokubuyisana kunye nemiphumela yayo.
 28. Amahlelo woBulungiswa bokubuyisana kumele abe neminqopho eyazekako emphakathini.

29. Amahlelo woBulungiswa bokubuyisana kumele abe nesisekelo sokulinganisa ipumelelo yawo.
30. Amahlelo woBulungiswa bokubuyisana kumele abekwe ilihlo (ngendlela yekambiso yangaphakathi) begodu ahlolwe (lirhubhululo elizijameleko) ukuze kube netuthuko eragela phambili).
31. Amahlelo woBulungiswa bokubuyisana kumele abe nemihlahlandlela namazinga wokusebenza agadangisiweko.
32. Amahlelo woBulungiswa bokubuyisana kumele athathe amagadango ukuqinisekisa ukuphepha kwababandakanyekako.
33. Amahlelo woBulungiswa bokubuyisana kunye nendlela yekambiso kumele zihlome begodu zilonde iindlela zokunghonghoyila ezisebenzako.
34. Amahlelo woBulungiswa bokubuyisana kumele abe nekambiso etlolwe phasi ukuze kwaziwe ukulawulwa kokuvezwa kweemfihlo eziphatelene nokwepulwa kweminye yemithetho.

6. ASETJENZISWA NINI AMAHLELO WOBULUNGISWA BOKUBUYISANA?

UBulungiswa bokubuyisana bungasetjenziswa eengabeni ezilandelako zendlela yekambiso yobulungiswa bezelelesi:

- **Ngaphambi kokuBika (*Pre-Reporting*):** umbango hlangana neenqhema ongaragela phambili ngokukhula ube bulelesi namkha indlela yekambiso yomphakathi ingasetjenzwa ngendlela yekambiso yoBulungiswa bokubuyisana namkha amahlelo. Lokhu kungafaka hlangana umsebenzi owenzelwa ukusekela abongazimbi ngaphambi kokungenelela okusemthethweni.
- **Ngaphambi kokugwetjwa (*Pre-Trial*):** Indlela yekambiso yoBulungiswa bokubuyisana namkha amahlelo angatholakaka ngemva kokubikwa komlandu begodu ngaphambi kwelanga lokugweba. Umtjhutjhisi angenyula ukudlulisela umlandu woBulungiswa bokubuyisana begodu amukele isivumelwano ekufikelelwe kiso, njengokudlulisela umlandu ekhotho uyokulalelwa ngokomthetho. Nangabe akunasivumelwano umlandu ungathunyelwa ekhotho godu.
- **Ngaphambi kokukhitjwa kwesigwebo (*Pre-Sentence*):** Indlela yekambiso yoBulungiswa bokubuyisana namkha amahlelo

angafakwa njengendlela yekambiso yesigwebo. Lokhu kungatjengisa isigwebo okufikelelwe kiso, nemiphumela ehlukahlukeneko evezwe njengobujamo besigwebo esijanyisiweko namkha esibekelwe isikhathi esizako.

- **Ngemva kokukhitjha kwesigwebo (*Post-Sentence*):** Indlela yekambiso yoBulungiswa bokubuyisana namkha amahlelo angafakwa ngemva kobanyana sekwehulwe isigwebo namkha njengengcanye yehlelo lokulungisa ukubuyisela ebujameni obulungileko, ukuhlanganisa ngobutjha namkha ihlelo lokutjhaphulula.

7. UBULUNGISWA BOKUBUYISANA BULUNGE NAKWENZEKANI?

UBulungiswa bokubuyisana ibonakala iyikambiso yokurarulula ubulelesi obuncani. Namkha kunjalo kuqakathekile ukutjheja bonyana i- UBulungiswa bokubuyisana bungasetjenziswa njengekambiso emilandwini efaka inturhu namkha ukungathembeki. Okuqakathekileko ligadango lapho indlela yekambiso yoBulungiswa bokubuyisana ithoma ukusetjenziswa.

Omunye nomunye umlandu kumele uqalelelwe ukuze kuthathwe isiqunto sokobana ikambiso namkha lihlelo loBulungiswa bokubuyisana lingathoma ukusetjenziswa ngaphambi kokugwetjwa, ngaphambi kokugwetjwa, ngesikhathi kugwetjwa ngaphambi kokubekwa umlandu namkha ngemva kokubekwa umlandu. Abasebenzisani nabo kumele bathathe isiqunto bonyana ngiwaphi amahlelo namkha ikambiso efaneleko yoBulungiswa bokubuyisana. Imilandu emincani ingeqiselwa amehlo ngaphandle kokugwetjwa kodwana ubulelesi obufaka phakathi izinga lenturhu kungenzeka kufakwe ikambiso yoBulungiswa bokubuyisana ngaphambi kokugwetjwa namkha ngemva kokugwetjwa.

8. INGABE UKUZIBANDAKANYA EKAMBISWENI/ EMAHLELWENI WOBULUNGISWA BOKUBUYISANA KUQINISEKISA BONA ISEPHULAMTHETHO SIZAKUKHITJHWA MSINYANA NGEPAROLI?

Lapho ukuzibandakanya ekambisweni namkha emahlelweni woBulungiswa bokubuyisana kungathathelwa phezulu nakuqalelelwa iparoli yesephulamthetho, akusiyinto leyo kwaphela eqalwa yiBhodo yeParoli nakuthathwa isiqunto sokucolela. IBhodo yeParoli nayo ihlahlwa ngeminye

imithetho ephathelene neparoli. Ukuzibandakanya emahlelweni wendlela yekambiso yoBulungiswa bokubuyisana namkh , kungenye yezinto ezithathelwa phezulu yiBhodo yeParoli begodu icala elinye nelinye liqalwa ngokwesimo salo.

9. IIMBONELA ZENDLELA YEKAMBISO YOBULUNGISWA BOKUBUYISANA KUNYE NAMAHELO

9.1. Ukulanyulwa kwesephulamthetho nongazimbi (*Victim Offender Mediation*) i-VOM

Ungazimbi kunye nesephulamthetho banganikelwa ithuba lokuhlangana endaweni ephephileko begodu ehlelekileko ukuze bacocisane ngobulelesi obenziwe kungazimbi ngerhelebho lomlamuli othwasisiweko. Ungazimbi uzibandakanya ekambisweni ngaphandle kokukatelelwa kusukela ekuthomeni kufikela ekupheleni kokuLanyulwa kukangazimbi nesephulamthetho. Umlamuli ukhuthaza ukucocisana okukhuthaza isephulamthetho sifunde ngobuhlungu abenzileko begodu akwazi ukuziphendulela ngokulimala okubangelwe sisenzo esimbi. Ikambiso ivumela ungazimbi kunye nesephulamthetho ukuthuthukisa indlela yokukhulumisana ngokuphathelene nomonakalo.

9.2. Ikhonferensi yesiQhema sezephulamthetho nabongazimbi kunye nemindeni (*Family and Victim Offender Group Conferencing*) i-FGC ne VOC.

Ikambiso le ihlanganisa ungazimbi, isephulamthetho kunye nomndeni, abangani babasekeli abaqakathekileko bonyana bathathe isiqu nto sokusombulula imiphumela yobulelesi. Lokho kunikela ungazimbi ithuba lokuzibandakanya bunqopha ebulelesini, lokho kukhombisa isephulamthetho umonakalo owenziwe sisenzo sakhe ukuze aziphendulele kilokho akwenzileko. Abasekeli besephulamthetho bayabandakanywa ukuze benze amatjhuguluko nokulungisa ukuziphatha esikhathini esizako kwesephulamthetho. Ithemu elithi “*Family Group Conferencing*” isetjenziselwa khulukhulu izephulamthetho ezisesebantwana.

9.3. Ikulumo-pendulwano, ukuThula kunye nendlela yokuLamula (*Dialogue, Peace and Sentencing Circles*)

Indlela yekambiso yoBulungiswa bokubuyisana yenzelwe ukuthuthukisa

ukuzwana phakathi kwabasebenzisani okufaka hlangana ungazimbi, abasekeli bakangazimbi, amalunga womphakathi, izephulamthetho, abasekeli besephulamthetho, amajaji, abatjhtjhisi, abaluleko, amapholisa kunye nabasebenzi bekhotho ngemiphumela efaneleko esombulula lokho abakukhathelelako. Ikambiso le ithuthukisa ukucola kweenqhema zoke ezibandakanyekako, inikela isephulamthetho ithuba lokulungisa imitjhapho yaso. Inikela abongazimbi, izephulamthetho, amalunga wonden nawomphakathi ithuba lokukhuluma babelane ngeembopho zokuthola iinsombululo ezakhako, ngokuqala umsuka wobulelesi, begodu bakwazi ukwakha amagugu womphakathi.

10. KGHANI INDLELA YEKAMBISO YEKHOMITJHANA YAMAQINISO NOKUBUYISANA KUYISIBONELO SOBULUNGISWA BOKUBUYISANA?

Ikambiso yezamaQiniso nokuColelenisa (*Truth and Reconciliation*) eyayenziwa ngemva kuka 1994 kuyindlela yoBulungiswa bokubuyisana eyenzelwa ukuthuthukisa ukuzibophelela ekuziphenduleleni kwesephulamthetho, avume umonakalo awenze kungazimbi, amalunga womnden kangazimbi kunye nomphakathi ukuze kubuye ubuntu nokuzwana kwabo boke abathintekako.

11. UYINI UMEHLUKO HLANGANA NOKWESULWA KWAMAREKHODI WOBULELESI NGOKOMTHETHO KUNYE NOBULUNGISWA BOKUBUYISANA?

UBulungiswa bokubuyisana kuyikambiso eyehlukileko kunokwesulwa kwamarekhodi wobulelesi ngokomthetho. Ukwesulwa kwamarekhodi wokulelesa kufaka hlangana ukususwa kwamarekhodi wokulelesa erherhweni lamarekhodi wobulelesi. Ikambiso yokulawula nokuphathwa kokwesulwa kwamarekhodi wobulelesi kwehlukile kunoBulungiswa bokubuyisana. kumNyango wezoBulungiswa nokuThuthukiswa komThethosisekelo kune-ofisi elenzelwe ukwesulwa kwamarekhodi wobulelesi.

12. IYINI INZUZO YENDLELA YOKUBUYISA KEZOBULUNGISWA?

- **Ukuvikela ukwephulwa komthetho ngokubuyelela**

Irhubhululo litjengisa bonyana izephulamthetho ezifumana ukungenelela koBulungiswa bokubuyisana imvamisa abasabuyeleli benze ubelelesi obufana nalobo ababenzileko kunalezo zaphulamthetho ezilanyulwa ngokucatjangwa bona ngokwamukelekako emphakathini woke.

- **Ukuhlomisa abongazimbi**

Indlela yekambiso yoBulungiswa bokubuyisana ingakghona ukukghonakalisa ukufikeleleka komthetho kubongazimbi banikele ilemuko elihlomisa abongazimbi. Ayithathi isikhathi begodu ayibizi khulu. Inamathuba wombuyiselo, ukulilisa begodu nokunikela ungazimbi ithuba lokuzikhulumela.

- **Ama-Ejensi wezobulungiswa bobulelesi azuzako**

kurhelebha ukuphungula umjeje wamacala asalela emuva begodu nokuvikela iindleko nokubambezeleka okungafunekiko emahlelweni wezobulungiswa bezobulelesi. Ukuphuphuma kwamajele kunye neendleko zababhadalimthelo kungaphunguka.

- **Yenza ngcono ukubandakanyeka komphakathi ekambisweni yokusombulula umbango**

ukufakwa nokubandakanyeka komphakathi ekambisweni yoBulungiswa bokubuyisana kuqinisa begodu kukhulisa idemokhrasi yethu.

13. UKUTHINTANA

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