

UBULUNGISWA BOKUBUYISELA

ESIMENI ESIFANELE

indlela eya ekuphileni



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA



Le ncwajana iqukethe ulwazi oluwumlando woBulungiswa Bokubuyisela Esimeni Esifanele. Ingasetshenziswa yibo bonke abantu ukuze baqonde ukuthi buyini Ubulungiswa Bokubuyisela Esimeni Esifanele; amagugu kanye nemigomo yabo; izigaba zokusetshenziswa kwabo kanye nezinzuzo zabo ohlelweni lobulungiswa bobugebengu.

1. ISINGENISO	5
2. UMLANDO WOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE	5
3. BUYINI UBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?	6
4. YINI UMEHLUKO PHAKATHI KWEZINHLELO ZOBULUNGISWA EZINDALA KANYE NEZINHLELO ZOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?	6
5. AYINI AMAGUGU KANYE NEMIGOMO YOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?	7
6. BUNGASETSHENZISWA NINI UBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE	10
7. BUFANELE NINI UBULUNGISWA BOKUBUYISELA ESIMENI?	10
8. INGABE UHLELO/IPROGEMU YOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE IQINISEKISA UMUNTU ONECALA UKUSHESHE ADEDELWE NGOKWEPHAROLI?	11
9. IZIBONELO ZEZINHLELO KANYE NAMAPROGEMU OBULUNGISWA BOKUBUYISELA ESIMENI	11
9.1. Ukubuyisana Komhlushwa Nomuntu Onecala (Victim Offender Mediation (VOM))	
9.2. Umhlangano Weqembu Lomndeni Womhlushwa Nomuntu Onecala (Family and Victim Offender Group Conferencing (FGC and VOC))	
9.3. Inkulumo-mpendulwano, Uxolo kanye neZikokela Zokugweba	
10. INGABE UHLELO LWEKHOMISHINI YAMAQINISO NOKUBUYISANA YISIBONELO SOHLELO LOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?	12

11. YINI UMEHLUKO PHAKATHI KOKWESULWA KANYE NOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?	13
12. ZIYINI IZINZUZO ZENDLELA YOKUBUYISELA ESIMENI EBULUNGISWENI?	13
12.1 Ukuvimbela ukona futhi	
12.2 Ukunikeza abahlushwa amandla	
12.3 Izinhlango zombulungiswa bobugebengu ezisizakalayo	
12.4 Ukuthuthukisa ukubandakanyeka komphakathi ohlelweni lokuxazulula impikiswano	
13. ABANTU OKUXHUNYANWA NABO (DOJ &CD) Imininingwane yokuxhumana:	14
13.1 Ihhovisi Likazwelonke	
13.2 Amahhovisi ezifunda	

1. ISINGENISO

INingizimu Afrika njengamazwe amaningi emhlabeni isasebenzisa uhlelo lwezobulungiswa olujezisayo. Uhlelo lokubeka icala lusaphethe ezinkantolo zethu lapho umuntu ebekwa khona icala phakathi nendawo nokubuzwa imibuzo futhi akunakukhathazeka noma kuncane ukukhathazeka maqondana nohlushwe ngobugebengu.

Isikhathi sokubusa kwentando yeningi saletha Ikhomishini Yamaqiniso Nokubuyisana (Truth and Reconciliation Commission (TRC)) ukuthi ibhekane nemisebenzi yobugebengu besikhathi esadlula ngendlela ehlanganisayo nebuyisanayo. Lokhu kwenza kwaholela ekuvukeni koMqondo Wezobulungiswa Bokubuyisana okungenzeka ukuthi kube okwamazwe angaphandle eMthethweni wesiDashi nowamaRoma kodwa bekuyingxenye yohlelo lwezobulungiswa bendabuko yase-Afrika.

2. UMLANDO WOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE

Ekuphenduleni ezinseleleni ezibhekene nohlelo lwezobulungiswa obubhekela ubugebengu kanye nokuguqulwa khona lapho ukuphathwa kwezobulungiswa, Iqoqo Lezobulungiswa Bokuvimbela Ubugebengu kanye Nokuvikeleka (Justice Crime Prevention and Security Cluster (JCPS)) lamukele indlela yoBulungiswa Bokubuyisela Esimeni ngenxa yezizathu eziningana kubandakanya iqiniso lokuthi Ubulungiswa Bobugebengu bulawulwa kakhulu izimpendulo zendabuko kanye namasiko ebugebengwini, nokuthi kusho izinhlelo ezingaphakathi nezingaphandle zohlelo lobulungiswa bobugebengu, kubandakanya "izindlela okungeyizo ezikahulumeni zokuyalela nezobulungiswa".

Kunokufana phakathi kobulungiswa bokubuyisela esimeni kanye nobulungiswa njengoba busetshenziswa ngama-Afrika ngokusebenzisa umphakathi kanye nezinkantolo zendabuko nazo ezathola izwi ezindaweni ezisemadolobheni ngamaforamu afana namakomiti omgwaqo kanye nezinkantolo zabantu. Khona lapho, umthetho wamacala nokusebenza kugcizelela imigomo yenhlonipho yesithunzi kanye nezinhlelo ezifana nokuhluka (ukuhlanganiswa ngokungenamigomo ohlelweni lwezobulungiswa bobugebengu), kube nomthelela omuhle ohlakeni lwenqubomgomo

yomthetho lohlelo lwezobulungiswa.

Uhlelo lwamanje lokujezisa okungukuthi uhlelo lokujezisa abantu ngobugebengu ababenzile kubukeka lunempumelelo enomkhawulo kuphela, yingakho kunesidingo sendlela kanye nempendulo ehlukile.

3. YINI UBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?

Ubulungiswa Bokubuyisela Esimeni indlela ephokophele ebulungisweni obuhlose ukubandakanya abantu empikiswaneni kanye nabanye abathintwe ukulimala (abahlushwa, abonile, imindeni ethintekile kanye namalungu omphakathi) ngokukhomba ukulimala ndawonye, izidingo kanye nezibopho ngokwamukela imisebenzi okubhekenwe nayo, ukubuyisela, kanye nokuthatha izindlela zokuvimbela ukuphinda kwenzeke kwesehlakalo kanye nokukhuthaza ukubuyisana.

Ubulungiswa Bokubuyisela Esimeni bubheka ubugebengu njengesenzo esilwisana nomhlushwa futhi kugudluzwe ukugxila ekulungiseni ukulimala okwenziwe kumhlushwa kanye nomphakathi. Bukholelwa ukuthi umenzi wecala naye udinga usizo futhi ufuna ukukhomba lokho okudinga ukushintshwa ukuvimbela ukubuye one.

4. YINI UMEHLUKO PHAKATHI KWEZINHLELO ZOBULUNGISWA EZINDALA KANYE NEZINHLELO ZOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?

- Ezinhlelweni Zobulungiswa Bobugebengu Nobabantu Ezindala, umhlushwa kanye nomuntu owonile babekwa njengebantú abayizimbangi, futhi kulindeleke ukuthi bahlale bevuma lapho zonke izinqumo ezibalulekile zenziwa ngabaqeqeshelwe umsebenzi (amajaji, abameli, osonhlalakahle, abasebenzi bokuqondisa izigwegwe, njll.).
- Ezindleleni zoBulungiswa Bokubuyisela Esimeni, umhlushwa nomuntu owonile bayingxenye yohlelo/lweprogramu kanye nezinqumo ezibalulekile ezithathwayo yibona abanomthelela kuzo.

5. AYINI AMAGUGU KANYE NEMIGOMO YOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?

1. Izinhlelo zoBulungiswa Bokubuyisela esimeni kufanele zihambisane nokubusa komthetho, imigomo yamalungelo abantu kanye namalungelo ahlinzekwe kuMthethosisekelo waseNingizimu Afrika.
2. Ubulungiswa Bokubuyisela Esimeni kufanele buthuthukise isithunzi sabahlushwa kanye nabenzi becala, kanye nokuqiniseka ukuthi akunamandla noma ukubandlululwa.
3. Bonke abantu kufanele bahlinzekwe ngolwazi oluphelele enhlosweni yohlelo, amalungelo abo ngaphakathi ohlelweni kanye nemiphumela yohlelo enokuba khona.
4. Zonke izinhlelo zoBulungiswa Bokubuyisela Esimeni Esifanele kufanele zibandakanye ukulungisela ngokuqaphela kwabahlanganyeli ezinhlelweni nakumaprogramu, kubandakanya abameleli bomthetho.
5. Abantu kufanele bakuqonde ukuthi ngokucacile bangahoxa noma nini ohlelweni.
6. Abantu kufanele banikezwe isikhathi esikahle esanele sokucabanga ngokhetho lwabo, uma kuphakanyiswe ukhetho lobulungiswa bokubuyisela esimeni esifanele.
7. Ukudluliselwa ezinhlelweni zobulungiswa bokubuyisela esimeni esifanele zinokwenzeka kunanoma yisiphi isigaba sohlelo lobulungiswa bobugebengu, ngokugxila okuthize ekuphambukeni okungaphambi kohlelo, isicelo kanye nezivumelwano zesigwebo, uhlelo lwangaphambi kwesigwebo, njengengxenywe yesigwebo, kanye nengxenywe yohlelo lokuhlangana futhi, kubandakanya ipharoli.
8. Ukuhlanganyela ezinhlelweni zobulungiswa bokubuyisela esimeni kufanele kube ngokokuzithandela kubo bonke abantu, kubandakanya abahlushwa.
9. Abantu akufanele baphoqelelwe kunanoma yisiphi isivumelwano esithize ngqo.
10. Ubulungiswa Bokubuyisela Esimeni esifanele kufanele bunikeze bonke abantu amathuba alinganayo okuhlanganyela

11. Izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele zibhalanse futhi zibe neqiniso
12. Ngokujwayelekile, izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele zibe yimfihlo. Abantu kufanele benze izinqumo, ngemvume, yokusebenzisa imfihlo.
13. Abahlushwa kanye nabantu abonile kufanele bavunyelwe ukuthi balethe abantu abazobeseka ekuhlanganeni uma kungukuthi lokhu akunawo amalungelo kanye nokuphepha kwananoma iyiphi enye ingxenye.
14. Abahlushwa kanye nabantu abonile kufanele bavunyelwe ukuthola izeluleko zomthetho kunanoma yisiphi isigaba sezinqubo.
15. Ukuhlanganyela kwezingane kufanele nemigomo emvumeni evela kumzali/kumbheki kanjalo nobukhona bakhe, noma ukuba khona komunye umuntu omdala okhethiwe onomsebenzi owodwa kuphela kanye negunya lokuvikela amalungelo kanye nezimfuno zezingane.
16. Uma nibhekene nengane, kufanele kunakekelwe ukuqinisekisa ukuthi iyaziqonda izinhlelo zokuhlanganyela ngempumelelo.
17. Izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele zikhuthaze ukusinda nokubuyisela esimeni.
18. Ukuhlinzeka kwezivumelwano zoBulungiswa Bokubuyisela Esimeni kufanele kungalingani nokulinyazwa okwenziwa.
19. Izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele zihlose ekuvimbeleni okona kwesikhathi esizayo.
20. Izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele ziphendule ekulimazeni, ezidingweni nasezibopheni.
21. Izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele zakhe isikhala sokuzisola, ukuveza ukuswaba, ukuxolisa, uxolo, ububele nozwelo, kodwa akufanele ziphoqe lezi zimpendulo ukuze zenzeke.
22. Amaprogremu oBulungiswa Bokubuyisela Esimeni Esifanele zidinga ukuqinisekisa ukuthi abantu abonile, kangangoba kunokwenzeka, akulungele ukuhlangabezana nezibopho ezenziwa yicala.
23. Izinhlelo zoBulungiswa Bokubuyisela Esimeni Esifanele kufanele, kangangoba kunokwenzeka, zifaneleke ngokwesiko kubantu

ababandakanyekayo.

24. Bonke abantu ababambe iqhaza ababhekene nokuqhutshwa kwezinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele baqeqeshwe ngokwanele noma nolwazi olwanele.
25. Amaprogramu oBulungiswa Bokubuyisela Esimeni kufanele zihlinzeke utolika oqeqeshiwe, lapho kudingeka khona.
26. Amaprogramu Okubuyisela Esimeni kufanele enziwe ngokubonisana nabahlushwa kanye nabenzi bamacala.
27. Isidingo sokuphepha komphakathi kufanele sicatshangwe ngokwezinhlelo nemiphumela yoBulungiswa Bokubuyisela Esimeni.
28. Izinhlelo zoBulungiswa Bokubuyisela Esimeni kufanele bube nezinhloso ezicacile ezisakazwe kahle.
29. Amaprogramu oBulungiswa Bokubuyisela Esimeni Esifanele kufanele ahlinzeke isisekelo okungakalwa ngaso impumelelo.
30. Amaprogramu oBulungiswa Bokubuyisela Esimeni Esifanele kufanele aqashwe (kusetshenziswa izinhlelo zangaphakathi) futhi kuhlolwe (kusetshenziswa ucwaningo oluzimele) ukukhuthaza ukwenza ngcono okuqhubekayo.
31. Amaprogramu oBulungiswa Bokubuyisela Esimeni Esifanele kufanele abe namakhodi ashicilelwe okusebenza kanye namazinga.
32. Amaprogramu oBulungiswa Bokubuyisela Esimeni kufanele bube nezindlela zokuqinisekisa ukuphepha kwabahlanganyeli.
33. Amaprogramu kanye nezinhlelo zoBulungiswa Bokubuyisela Esimeni Esifanele kufanele kwenze futhi kunakekelwe izindlela zokukhalaza ezisebenza ngempumelelo .
34. Amaprogramu oBulungiswa Bokubuyisela Esimeni kufanele abe nezinqubo ezibhaliwe zokuphathwa kokudalula okuphathelene namanye amacala.

6. BUNGASETSHENZISWA NINI UBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?

Ubulungiswa Bokubuyisela Esimeni Esifanele bungasetshenziswa kulezi zigaba zohlelo lwezobulungiswa bobugebengu:-

- **Ngaphambi Kokubika:** izimpikiswano phakathi kwabantu ezinokuqhubekela ohlelweni lobugebengu noma lomphakathi kungabhekwana nalo ngokusebenzisa izinhlelo zoBulungiswa Bokubuyisela Esimeni Esifanele. Lokhu kungabandakanya umsebenzi wokusiza umhlushwa owenziwe ngaphambi kokungenelela okusemthethweni.
- **Ngaphambi kokuthethwa kwecala:** Izinhlelo zoBulungiswa Bokubuyisela Esimeni noma amaprogramu kungabekwa emva kokuba icala selibekiwe nangaphambi kosuku lwecala. Umshushisi anganquma ukudlulisela udaba eBulungisweni Bokubuyisela Esimeni nokwamukela isivumelwano okufinyelelwe kuso isibonelo, ukuphambukisa icala ekulalelweni kwecala enkantolo okusemthethweni. Uma kungenasivumelwano udaba lungadluliselwa emuva enkantolo.
- **Ngaphambi Kwesigwebo:** Izinhlelo kanye namaprogramu obulungiswa bokubuyisela esimeni kungafakwa njengengxenye yohlelo lokugweba. Lokhu kungazisa ukuthi kufikwe kanjani esigwebeni sangempela, imiphumela eminingi ishiwo njengemibandela yesigwebo esihlehlisiwe noma esimisiwe.
- **Ngemuva Kwesigwebo:** Uhlelo namaprogramu oBulungiswa Bokubuyisela Esimeni kungethulwa emva kokuba isigwebo sesikhishiwe noma njengengxenye yohlelo lokulungisa ukuze kubuyiselwe esimeni, kuhlangukise futhi noma uhlelo lwangaphambi kokudedelwa.

7. BUFANELE NINI UBULUNGISWA BOKUBUYISELA ESIMENI?

Ubulungiswa Bokubuyisela Esimeni kaningi bubukeka njengohlelo lokubhekana nobugebengu obuthambile noma ubugebengu obuncane. Kodwa-ke kubalulekile ukwazi ukuthi Ubulungiswa Bokubuyisela Esimeni

bungasetshenziswa njengohlelo ngisho ezimeni ezibandakanya udlame noma ukungathembeki. Okubalulekile isigaba okwethulwa ngaso uhlelo loBulungiswa Bokubuyisela Esimeni Esifanele

Isimo ngasinye kuzofanele ukuthi sicutshangwe futhi kwenziwe nesinqumo esifanele sokuthi ingabe uhlelo noma iprogramu yoBulungiswa Bokubuyisela Esimeni Esifanele kufanele bethulwe ngaphambi kokubekwa icala, ngaphambi kokuthethwa kwecala, ngesikhathi sokuthethwa kwecala, ngaphambi kokugwetshwa noma emva kokugwetshwa yini. Ababambiqhaza nabo kuzofanele banqume ukuthi yini izinhlelo noma amaprogramu afanele obulungiswa bokubuyisela esimeni. Amacala amancane angaphanjukiswa ngaphandle kokubekwa icala kodwa amacala abandakanya izinga lodlame kungadingeka ukuthi abandakanye uhlelo loBulungiswa Bokubuyisela Esimeni esifanele ngaphambi kokugwetshwa noma ngemva kokugwetshwa.

8. INGABE UKUHLANGANYELA OHLELWENI/KUPROGREMU YOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE KUQINISEKISA UMENZI WECALA UKUSHESHE AKHULULWE NGOKWEPHAROLI?

Ngesikhathi ukuhlanganyela ohlelweni noma kuprogramu yoBulungiswa Bokubuyisela Esimeni esifanele kungacatshangwa uma kunqunywa ipharoli yomuntu onecala, akusiyona into kuphela okufanele icatshangwe yiBhodi yepharoli. Ibhodi yePharoli isaqondiswa ngeminye imithetho ephathelene nepharoli. Ukuhlanganyela ezinhlelweni noma kumaprogramu oBulungiswa Bobugebengu, ngokukodwa kwezinto eziningi okufanele zicatshangwe yiBhodi yePharoli kanti icala ngalinye licatshangwa ngobulona.

9. IZIBONELO ZEZINHLELO KANYE NAMAPROGREMU OBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE

9.1 Ukubuyisana Komhlushwa Nomuntu Onecala (VOM)

Umhlushwa kanye nomuntu onecala banganikwa ithuba lokuhlangana endaweni ephephile nehlelekile ukubandakanyeka engxoxweni ngobugebengu obenziwe kumhlushwa ngosizo lomlamuli oqeqeshiwe. Umhlushwa uhlanganyela ohlelweni ngokuzithandela kusukela ekuqaleni kuze kube sekugcineni kwe-VOM. Umlamuli usiza ngezingxoxo ezikhuthaza

umuntu onecala ukuthi afunde ngomthelela wobugebengu nokuziphendulela ngokulimala okwabangwa ubugebengu. Uhlelo luvumela umhlushwa kanye nomuntu onecala ithuba lokwenza uhlelo olubhekela ukulimala.

9.2 Umhlango Weqembu Lomndeni Womhlushwa Nomuntu Onecala (FGC and VOC)

Lolu hlelo luhlanganisa ndawonye umhlushwa, umuntu onecala, kanye nomndeni, abangane kanye nabasizi ababalulekile babo bobabili ekunqumeni ukuthi kubhekwana kanjani nemiphumela yobugebengu. Lokhu kuhlose ukunikeza umhlushwa ithuba lokuthi abandakanyeke ngqo ekuphenduleni ebugebengwini, akhuphule ukwazi komuntu onecala ngomthelela wokuziphatha kwakhe nokuhlinzeka ngethuba lokuziphendulela ngakho. Uhlelo lokusiza umuntu onecala bayabandakanyeka ekunxephezeleni nokwakha ukuziphatha kwesikhathi esizayo komuntu owonile. Itemu Umhlango Weqembu Lomndeni livamise ukusetshenziswa ngqo maqondana nabanamacala ezingane.

9.3 Inkulumbo-mpendulwano, Uxolo kanye neZikokela Zokugweba

Lezi Izinhlelo Zobulungiswa Bokubuyisela Esimeni Esifanele zenzelwe ukwenza isivumelwano phakathi kwabantu ababambe iqhaza kubandakanya abahlushwa, abasizi bomhlushwa, amalungu omphakathi, abenzi bamacala, abasizi babantu abonile, abasebenzi bomthetho/amajaji, abashushisi, abameli bomuntu onecala, amaphoyisa kanye nabasebenzi basenkantolo ngomphumela ofanele obhekela ukukhathazeka kwabo bonke abantu abanentshisekelo. Lezi zinhlelo zikhuthaza ukusinda kwabo bonke abantu abathintekile, kunikeza umuntu onecala ithuba lokwenza izinxephezelo. Kunikeza abahlushwa, abantu abenze icala, amalungu omndeni kanye nemiphakathi izwi kanye nomsebenzi obanjiswene ekutholeni izixazululo ezakhayo, kubhekwana nezimbangela ezibangele ukuziphatha kobugebengu, futhi kwenze nomqondo womphakathi maqondana namagugu imiphakathi eshiyelana ngawo.

10. INGABE UHLELO LWEKHOMISHINI YAMAQINISO NOKUBUYISANA YISIBONELO SOHLELO LOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?

Uhlelo Lwamqiniso Nokubuyisana olwenziwa ngonyaka ka-1994 luyindlela

yoBulungiswa Bokubuyisela Esimeni Esifanele njengoba lufunelwa ukuthi lukhuthaze ukwamukelwa komsebenzi okubhekenwe nawo ohlangathini lwabantu abona, bavume ukulinyazwa okwezwiwa abahlushwa, amalungu emindeni yabahlushwa kanye nemiphakathi ngenhloso yokusinda nokubuyiselwa esimeni kwabo bonke abaqondene nalokhu.

11. YINI UMEHLUKO PHAKATHI KOKWESULWA KANYE NOBULUNGISWA BOKUBUYISELA ESIMENI ESIFANELE?

Ubulungiswa Bokubuyisela Esimeni uhlelo olwehlukile ekwesuleni. Ukwesulwa kwamarekhodi obugebengu kubandakanya ukususwa kwamarekhodi obugebengu ohlelweni lwamarekhodi obugebengu. Izinhlelo zokuphatha amabhuku kanye nokuphathwa kokwesula izinhlelo eziseceleni eBulungisweni Bokubuyisela Esimeni. Ngaphakathi eMnyangweni Wezobulungiswa Nokuthuthukiswa Komthethosisekelo kunehhovisi eliseceleni elibhekene nomsebenzi wokwesulwa kwamarekhodi obugebengu.

12. ZIYINI IZINZUZO ZENDLELA YOKUBUYISELA ESIMENI ESIFANELE EBULUNGISWENI?

- **Ukuvimbela ukona futhi**

Ucwaningo lukhombisa ukuthi abantu abanecala abathola ukungenelela kobulungiswa bokubuyisela esimeni esifanele kungenzeka kancane ukuthi babuye benze amacala futhi kunabenzi bamacala abafanayo abancike ekungeneleni kakhulu kwakudala.

- **Ukunikeza abahlushwa amandla**

Izinhlelo zoBulungiswa Bokubuyisela Esimeni Esifanele zingasiza ukufinyelela ebulungisweni kubahlushwa futhi zihlinzeke ulwazi olunikeza amandla kakhulu kubahlushwa. Futhi akuchithi isikhathi kakhulu futhi kubiza kancane. Kunokwenzeka kakhulu ukuthi zibuyisele esimeni, izinxephezelo kanye nokunikeza abahlushwa izwi.

- **Izinhlangano zobulungiswa bobugebengu ezisizakalayo**

Kuyasiza ukunciphisa amacala asalele emuva nokuvimbela izindleko ezingenasidingo nokwephuza ohlelweni lobulungiswa bobugebengu. Ukugcwala ngokweqile emajele nezindleko kubakhokhintela kungenzeka

zincishiswe futhi.

- **Ukuthuthukisa ukubandakanyeka komphakathi ohlelweni lokuxazululwa kwempikiswano**

Ukufakwa nokuhlanganyela kwemiphakathi ezinhlelweni zobulungiswa bokubuyisela esimeni kuqinisa futhi kwenze ukuthi umbuso wethu wentando yeningi ujule.

13. OKUXHUNYANWA NABO

Iminingwana yokuthintana yakwa-DOJ &CD:

Ihhovisi Likazwelonke	
Nkk C Kok Ucingo: (012) 315 1259 Emeyili: ckok@justice.gov.za	Adv J.V Mbamali - SLAO: Restorative Justice Ucingo: (012) 315 1458 Emeyili: VMbamali@justice.gov.za
Amahhovisi ezifunda	
Nk P Moodley - Umqondisi: Izinsizakalo Zomthetho KwaZulu-Natal Ucingo: (031) 301 5303 Emeyili: pmoodley@justice.gov.za	Mnu P Mthimunye - Umqondisi: Izinsizakalo Zomthetho Mpumalanga Ucingo: (013) 753 9333 Emeyili: PMthimunye@justice.gov.za
Mnu D.B Ramolibe - Umqondisi: Izinsizakalo Zomthetho Freyistata Ucingo: (051) 407 1800 Emeyili: dramolibe@justice.gov.za	Nk D.E Mongoato - Umqondisi: Izinsizakalo Zomthetho Mpulanga Kapa Ucingo: (043) 702 7108 Emeyili: dmngoato@justice.gov.za
Mnu S Ramasodi - Umqondisi: Izinsizakalo Zomthetho Gauteng Ucingo: (011) 223 7681 Emeyili: SRamasodi@justice.gov.za	Mnu M Sebetso - Umqondisi: Izinsizakalo Zomthetho Limpopo Ucingo: (015) 297 5562 Emeyili: msebetso@justice.gov.za

Amahhovisi ezifunda	
<p>Nk D Kassan - Umqondisi: Izinsizakalo Zomthetho Intshonalanga Kapa Ucingo: (021) 462 5470 Emeyili: DKassan@justice.gov.za</p>	<p>Adv D Plaatjies - Umqondisi: Izinsizakalo Zomthetho Inyakatho Kapa Ucingo: (053) 839 0052 Emeyili: dplaatjies@justice.gov.za</p>
<p>Nk R Tladi - Umqondisi: Izinsizakalo Zomthetho Nyakatho Ntshonalanga Ucingo: (018) 389 8305 Emeyili: rtladi@justice.gov.za</p>	

Department of Justice and Constitutional Development
Chief Directorate: Promotion of the Rights of Vulnerable Groups
Tel: (012) 315 1458/357 8509
Fax: (012) 315 1851
www.justice.gov.za
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