

IsiCwangciso seZwelonke Sokuthabath' iNyathelo
Sokuphelisa iNtiyo yoBuhlanga, uCalulo loBuhlanga,
iNtiyo yaBantu Bamanye aMazwe Nokunye
Ukunganyamezelani Okuyelele Apho



REPUBLIC OF SOUTH AFRICA



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Ingabula-zigcawu eyenziwa nguMongameli weRiphabliki yoMzantsi-Afrika

Ukuwela koMzantsi-Afrika ngoxolo nangothetha-thethwano ukusuka kwinkqubo yokwahlulwa-hlulwa kweentlanga ukuya kulawulo lwentando yesininzi kumashumi amabini anesihlanu eminyaka adlulileyo kwaba yinto eyavuyelwayo lihlabathi. Kwadibanisa abemi boMzantsi-Afrika abantsundu nabamhlophe emva kweenkulungwane zeminyaka zongquzulwano kuzanywa ukuba kubekho isizwe esitsha, esimanyeneyo esisekelwe kwimigaqo yokulingana nesidima.

Kwintetho yokubekwa kwakhe ngoMeyi 1994, uMongameli Mandela usifanisa nemithi yasePitoli entyatyambo *zipurple* nemithi *imimosa* yasehlathini, emile kumhlaba weli lizwe lihle, kwaye uthetha ngesizwe esimibala-bala okomnyama esibhakabhakeni esibantu baso banoxolo phakathi kwabo bekwanoxolo nabantu behlabathi liphela.

Njengoko ilizwe lwethu lifinca ama-25 eminyaka yenkululeko nolawulo lwentando yesininzi, noko kunjalo siyabongozwa ukuba siyivume eyokuba lo mbono mhle kangaka uphazanyiswa ziziganeko eziman' ukuthi gqi zentiyo yobuhlanga nocalulo lobuhlanga.

Asisedwa kule nto, kuba intiyo yobuhlanga nentiyo yabantu bamanye amazwe, edla ngokusithela ngokuzingca ngobuzwe bethu, iyanda yona. Noko ke, xa le micelomngeni iman' ukuzibonakalisa eluntwini, sinoxanduva lokukuphelisa ukuziphatha okuchasene nomoya weNtshayelelo yoMgaqo-siseko wethu ethi:

“Thina, bantu baseMzantsi-Afrika,

Siyaziqonda iintswela-bulungisa zexesha elidlulileyo;

Sibothulel' umnqwazi abo baye bev' ubunzima ukuze kubekho ubulungisa nenkululeko

elizweni lethu;

Siyabahlonela abo baye basebenzela ukwakha nokuphucula ilizwe lethu; kwaye

Sikholelwa kwelokuba uMzantsi-Afrika ngowabo bonke abahlala kuwo, bemanyene nangona bengafani.”

Intiyo yobuhlanga nocalulo lobuhlanga ziyaqhubeka ziviwa luluntu lwethu kunye nezinye iintlobo zenzondo, ukucalula ngobuni, intiyo yabantu bamanye amazwe, intiyo yabathandana besisini esinye, izenzo zolwaphulo-mthetho zokubathiya abanye neentetho ezibonisa ukubathiya abanye.

Lifikile ixesha lokuba siwaphose kude onke amakhamandela enzondo nocalulo ukuze sisizalisekise isithembiso sokwakha ilizwe elimanyeneyo, elingenabuhlanga, elingacaluli ngesini nelichumayo, apho bonke abahlala kulo babe abanalungelo nje kuphela lokuba balingane, koko bakuve ukulingana kubomi babo.

Ukuzimisela koMzantsi-Afrika ekupheliseni ucalulo nokunganyamezelani okuziintlobo ngeentlobo kususela kwiDeclaration and Programme of Action (isiBhengezo nesiCwangciso Sokuthabath' iNyathelo) eyamkelwe yiNkomfa yeHlabathi yeZiwe Ezimanyeneyo nxamnye nentiyo yobuhlanga ka-2001, eyabongoza amazwe ukuba “ayiqulunge ngokukhawuleza kwaye aqalise ukuyisebenzisa

imigaqo-nkqubo yelizwe nezicwangciso zokuthabath' amanyathelo zokuphelisa ubuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyebele apho, kuquka neziganeko zokubukulana ngokwesini."

Ekusabeleni esi simemelelo, iKhabhinethi yamkele esi ***siCwangciso seZwelonke Sokuthabath' iNyathelo Sokuphelisa iNtiyo yoBuhlanga, Ukucalula ngoBuhlanga, iNtiyo yaBantu Bamanye Amazwe Nokunye Ukunganyamezelani Okuyebele apho.***

Esi siCwangciso sisekelwe ekuqinisekeni kwabo bonke abantu baseMzantsi-Afrika kwinto yokuba, njengoko izenzo ezimbi zocalulo olungafanelekanga nokungalingani zenziwa ngabantu, sinazo iindlela zokuziphelisa ngokupheleleyo ezi zenzo zimbi kwilizwe lethu.

Esi siCwangciso siye saphuhlisa ngokubonisana nabantu abaninzi ekukho phakathi kwabo urhulumente, amaqumrhu eSahluko 9 soMgaqo-siseko noluntu, kwaye sisekelwe kwimigaqo esebenza ehlabathini liphela, kuxhomekeko lomnye komnye, nokungabi nakwahlulwa-hlulwa kwamalungelo oluntu, ukuba nenxaxheba nokuqukwa, ukuphunyezwa ngokuqhubekayo, ukuphendula, ukulingana nokungacaluli.

Esi siCwangciso sinkqamangela onke amacandelo oluntu lwethu ekukhuthazweni nasekukhuselweni kwamalungelo oluntu, nasekwenzeni abantu bazi ngokuchaswa kwentiyo yobuhlanga, ukulingana nokuchaswa kocalulo. Sifuna ukuba kubekho ubuqabane phakathi kwamasebe karhulumente namaQumrhu eSahluko 9 soMgaqo-siseko ekuyenzeni isebenze imfundiso yokuchasa intiyo yobuhlanga neyokuchasa ucalulo.

Amanye amanyathelo aquka ukuqokelelwa kwengcombolo engentiyo yobuhlanga nocalulo ukuze sikwazi ukuziphelisa ezi ngxaki size siphucule iindlela zoncedo ezinjengokutshutshiswa kwabo bonayo nokuthuthuzelwa ngokwasengqondweni kwamaxhoba.

IsiCwangciso sezwelonke Sokuthabath' iNyathelo sikwathetha ngokucingisiswa kwemithetho yepalamente ekufuneka yenziwe utshintsho okanye yamkelwe ngenjongo yokuphucula ukukhuselwa kwamaxhoba, ukwakhiwa koluntu olulinganayo, nokomeleza ukongama komthetho nolawulo lwentando yesininzi.

Esi siCwangciso sifunisa ukuba bonke abantu baseMzantsi-Afrika bazinkqamangele kwimigaqo nokuziphatha eya kusikhulula kwixesha elidlulileyo ebeliyingozi, ize isiqeqeshe kwindlela yokuziphatha esingise ekuzivuseleleni nasekukhuleni.

Lo mgudu ngumgudu omawusuke entliziyweni yomntu ngamnye nakwikhaya ngalinye, imigaqo esiphila ngayo ibonakale kumagummbi ethu okufundela, kwiindawo esiphangela kuzo, xa simi emigceni kwiisuphamakethi, kwiivenkile zokutyela nasezitediyam.

Masenze ukuba iminyaka yethu engama-25 elandelayo yenkululeko ibe lixesha apho siya kube sikhululeke ngenene kwiyantlukwano, kucalulo nasekunganyamezelanini kwexesha elidlulileyo.

INTSHAYELELO

INkomfa yeHlabathi yokuchasa iNtiyo yoBuhlanga, Ukucalula ngoBuhlanga, iNtiyo Yabantu Bamanye Amazwe Nokunye Ukunganyamezelani Okuyelele Apho, njengoko yathi yanikelwa kwiDeclaration and Programme of Action yaseDurban (2001) ithi:

“Siyaqonda ukuba intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho kwenzeka ngezizathu zohlanga, umbala, umnombo womntu okanye imvelaphi yomntu ngokwelizwe okanye ngokwesizwe nokuthi amaxhoba angaba ngamaxhoba eentlobo zocalulo eziliqela okanye ezimasikizi ngokusekelwe kwezinye izizathu ezihlobene nezi ezinjengesini, ulwimi, inkolo, izimvo zopolitiko okanye ezinye izimvo, imvelaphi ngokwasentlalweni, impahla anayo umntu, ukuzalwa kwakhe okanye obunye ubume bakhe.”

IDeclaration and Programme of Action eyathi yamkelwa yiNkomfa Yehlabathi yeZizwe Ezimanyeneyo yokuchasa intiyo yobuhlanga ibongoza “amazwe ukuba ayiqulunge ngokukhawuleza kwaye aqalise ukuyisebenzisa imigaqo-nkqubo yelizwe nezicwangciso zokuthabath’ amanyathelo zokuphelisa ubuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, kuquka neziganeko zokubukulana ngokwesini.”

Njengoko imbali yoMzantsi-Afrika iyeyobukoloni ali nokwahlulwa-hlulwa kweentlanga, isimemelelo seNkomfa yaseDurban sisesifanelekileyo kunene. Ngo-1994, ilizwe laphuma kumakhulu amathathu anesiqingatha eminyaka yokucinezelwa ngokobuhlanga, obebuqhutyelwa phambili qho ligcuntswana labamhlophe, ngoorhulumente bobukoloni ali nokwahlulwa-hlulwa kwabantu ngokweentlanga. Kweli thuba lide, uninzi lwabantu abaNtsundu namagcuntswana abantu abangemhlophe bebephathwa njengabantu bokutheza iinkuni nabantu bokuya kukha amanzi. Bebekelwe ecaleni kupolitiko, behlwempuziwe ngokoqoqosho kwaye becinezelwe ngokwenkcubeko.

Iziva zobukoloni ali nokwahlulwa-hlulwa kweentlanga zisabonakala ebusweni boluntu lwaseMzantsi-Afrika namhlanje. Ubuhlwempu nokungaphucuki kusekelwe kubuhlanga — kuchaphazela kakhulu abantsundu — bube bona ubutyebi nobomi obubhetele buseyinto yabamhlophe ubukhulu becala.

Ubukoloni ali nokwahlulwa-hlulwa kweentlanga kwazona ngakumbi izithethe esezikho ebezisijongela phantsi isidima sabasetyhini eluntwini. Izithethe zokubeka amadoda phambili ebezisoloko zibonakala kuluntu lwaseAfrika zasetyenziswa kupolitiko ukuba zince oorhulumente begcuntswana. Yinyaniso engenakuphikiswa into yokuba, xa bethlekiswa namadoda, abasetyhini babekwinqanaba eliphantsi eluntwini.

Iminyaka emininzi yenkqubo yentiyo yobuhlanga neyokwahlukaniswa nabanye abantu yokwahlulwa-hlulwa kweentlanga ityale imbewu yentiyo yabantu bamanye amazwe, ngakumbi intiyo yabantu baseAfrika, isiba sisichasi samakhulu-khulu eminyaka yokuba ngabantakwethu noodade kwama-Afrika eMzantsi-Afrika nabo abavela kwezinye iinxalenye zeli lizwekazi. Kwenzeke ngale ndlela ke ukuba abantu baseAfrika babe ngawona maxhoba entiyo yabantu bamanye amazwe kuMzantsi-Afrika wanamhlanje. Esi siCwangciso seZwelonke Sokuthabath’ iNnyathelo sisabela ikhwelo elenziwe yiNkomfa yaseDurban kwaye injongo ephambili kukuba ibe luxwebhu olusisikhokelo kwimigudu yezwelonke yokuphelisa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho.

Esi siCwangciso asisosikarhulumente kuphela — seselizwe. Nanjengoko iZikhokelo zeZizwe Ezimanyeneyo (UN Guidelines¹) zisitsho, isicwangciso sezwelonke sokuthabath' inyathelo nxamnye nocalulo lobuhlanga licebo lokuphumelelisa iinjongo zesizwe. Ngoko ke, masithatyathwe njengomzamo welizwe lonke ngokwenene, obandakanya zonke iinxalenye zikarhulumente noluntu. URhulumente ufeza indima ebalulekileyo ekuqalisweni, ekusungulweni nasekusenzeni sisebenze isicwangciso sezwelonke sokuthabath' inyathelo nxamnye nocalulo lobuhlanga. Kwangaxesha-nye, ukuze kubekho umahluko wokwenene, esi siCwangciso kufuneka “abanini” baso kube ngabo bonke abemi belizwe. Ekufuneni ukufezekisa iinjongo zabo, ooRhulumente kufuneka babe nobuqabane obububo nabo bonke ababandakanyekileyo.

IsiCwangciso esi sisebenza kwilizwe lonke kwaye sisebenza kuwo onke amasebe namanqwanqwa karhulumente, kuquka urhulumente, ipalamente neenkundla kuwo onke amanqanaba azo.

Esi siCwangciso siye saqulunqwa ngokubonisana okuphangaleleyo okubandakanya urhulumente, amaqumrhu eSahluko 9 soMgaqo-siseko noluntu kwaye sisekelwe kwimigaqo esebenza jikelele, ukuxhomekeka komnye komnye nokungabi nakwahlulwa kwamalungelo oluntu, ukuba nenxaxheba nokuqkwa, ukufezekiswa ngokuthe ngcembe, ukuphendula, ukulingana nokungacaluli.

- *Ukusebenza jikelele: IsiCwangciso kufuneka siqonde ukuba amalungelo oluntu asisiseko akhuselwa jikelele ngumthetho wamazwe oqhelekileyo engathintelwa yimida naluhlobo lwempucuko yelizwe elithile. Sifanele sihambisane nokubopheleleka kukaRhulumente ukuba awahlonele, awakhusele kwaye awafezekise amalungelo oluntu neenkululeko ezisisiseko, kungakhathaliseki ukuba injani inkqubo yopolitiko, eyoqoqosho okanye eyenkubeko.*
- *Ukuxhomekeka komnye komnye nokungabi nakwahlulwa: IsiCwangciso kufuneka sizenike ingqalelo elinganayo zonke iindidi zamalungelo, kuquka namalungelo oluntu nawopolitiko, kwakunye namalungelo oqoqosho, awasentlalweni nawenkubeko, ngakumbi xa kukhunjulwa ukuba ukumbandeza ilungelo elinye umntu kuthintela ukuxhamla kwakhe namanye amalungelo.*
- *Ukuthabath' inxaxheba nokuqkwa: IsiCwangciso kufuneka siqinisekise ukuthabath' inxaxheba okupheleleyo, okuphumelelayo nangokulinganayo. Kufuneka sixhobise abantu namaqela abantu abaye bacalulwa ngokobuhlanga okanye abacalulwayo ngokobuhlanga ukuze bazazi iimfuno zabo ezingamalungelo abo kwaye zifezekiswe.*
- *Ukufezekiswa ngokuthe ngcembe: IsiCwangciso kufuneka siqulunge iinkqubo ekujoliswe kuzo, ezihambisana nomthetho nezinenkqubela ngokwaneleyo ukuze bawafumane amalungelo abo abantu namaqela abantu abacalulwa ngokobuhlanga nangezinye iindlela.*
- *Ukuphendula: Ukuze sisebenze ngempumelelo, isiCwangciso kufuneka sibe nenkqubo yokuphendula esekelwe kwiinjongo ezithile, eziqinisekileyo. Kufuneka ithi gqi namacebo okuwenza aphenjule amaqumrhu awongamele ukusebenza kwaso ephenjula kuloo maqela nabantu abamalungelo abo kufunwa ukuba akhuliswe kwaye akhuselwe.*
- *Ukulingana nokungacaluli: Umgaqo wokungacaluli ungundoqo wamalungelo oluntu kwaye ungumgaqo oqukiweyo kuzo zonke izivumelwano zamalungelo oluntu. IsiCwangciso kufuneka sikhokelwe ngumgaqo wokuxhanyulwa kwamalungelo oluntu ngokulinganayo*

¹ Developing National Action Plans against Racial Discrimination, A Practical Guide, UNHR, 2014, p. 10

njengenxalenye ebalulekileyo yokwalelwa kokucalula ngobuhlanga. Kufuneka izame ukuqinisekisa ukuba amalungelo oluntu asetyenziswa ngokulinganayo, ngamathuba alinganayo nangeziphumo ezilinganayo, eneneni nakumthetho, kubo bonke abantu. Kufuneka ibeke phambili abo bazizisulu kakhulu zocalulo lobuhlanga. Ukungacaluli nokulingana kuyimfuneko ekusetyenzisweni nasekuxhanyulweni kwamalungelo oluntu. Ilungelo lokulingana nokungacalulwa lifuna ukuba ooRhulumente baqinisekise ukungacalulwa ekusetyenzisweni kwelungelo lomntu ngalinye.

- *Ukuxokomezelelana*

IsiCwangciso sisekelwe ekukholelweni kwabo bonke abantu baseMzantsi-Afrika kwelokuba, njengokuba izinto ezimbi zocalulo olungafanelekanga nokungalingani zibangelwe ngabantu, zinako ukupheliswa, zenziwe zinyamalale ngokupheleleyo elizweni lethu.

UKUCHAZWA KWAMAGAMA

Inkcazelo: INkomfa yeHlabathi echasene neNtiyo yoBuhlanga, uCalulo loBuhlanga, iNtiyo Yabantu Bamanye Amazwe Nokunganyamezelani Okuyelele Apho, eyayihlanganisene eDurban ukususela kumhla wama-31 kuAgasti ukuya kowesi-8 kuSeptemba 2001, iyayivuma i-International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (iSivumelwano Samazwe Ngamazwe Sokupheliswa Kwazo Zonke Iintlobo Zocalulo Lobuhlanga) njengesona sixhobo siphambili samazwe ngamazwe sokuphelisa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okunjalo.

Ngoko ke iSicwangciso sisebenzisa ukuchazwa kwamagama okuqulethwe kwi-ICERD, apho kunokwenzeka khona, okuqulethwe nakwezinye izivumelwano zamazwe ngamazwe. Apho umthetho wepalamente yelizwe lethu okanye iNkundla yoMgaqo-siseko iwachaze ngokubhekele phaya amagama athile, oku kubonisiwe.

Ucalulo: siso nasiphi na isenzo okanye ukungenzi, kuquka umgaqo-nkqubo, umthetho, umgaqo, isiqhelo, umqathango okanye imeko ethi ngokuthe ngqo okanye ngokungathanga ngqo--

(a) ithwalise umntu uxanduva, iimbopheleleko okanye ukuba selishweni; okanye

(b) ebandeza umntu iinzuzo ezithile, amathuba okanye ukuba sethamsanqeni,

ibandeza umntu ngesizathu okanye ngezizathu ezingavumelekanga.²

Ucalulo ngesini: Kukwenza umahluko, ukubukulwa okanye ukuthintelwa okwenziwa ngenxa yokuba umntu engowesini esithile, okuthi kube nesiphumo sokungananzwa nokungaxhanyulwa kwamalungelo ngabasetyhini, kungakhathaliseki ukuba batshatile okanye abatshatanga,

² Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

ngokusekelwe ekulinganeni kwamadoda nabasetyhini, kungananzwa amalungelo abo neenkululeko ezisisiseko kupolitiko, kuqoqosho, kwinkcubeko, entlalweni okanye kweminye imiba.³

Izenzo zolwaphulo-mthetho lwentiyo: Ulwaphulo-mthetho lwentiyo sisenzo esikukona esigqalwa nguwo nawuphi na umthetho, ukwenziwa kwaso ngumntu kubangelwa yintiyo anayo loo mntu ngexhoba elo ngenxa yento enye okanye ezingaphezu kwenye kwizinto elinazo ixhoba okanye umntu wosapho lwakhe okanye iqela labantu anxulumene nalo:

- (a) ubudala beminyaka;
- (b) ukuba yinkawu;
- (c) ukuzalwa;
- (d) ibala;
- (e) inkcubeko;
- (f) isiphene;
- (g) imvelaphi ngokobuzwe okanye ngokwasentlalweni;
- (h) isini;
- (i) ukuba nentsholongwane kagawulayo;
- (j) ulwimi;
- (k) ilizwe angummi walo, ukuba ngumfudukeli okanye ukuba yimbacu;
- (l) umsebenzi wokuziphilisa awenzayo;
- (m) iqela lopolitiko akulo okanye iinkolelo zakhe;
- (n) uhlanga;
- (o) unqulo;
- (p) isini, kuquka ukuzijika isini; okanye
- (q) ukuthandana nabesini sakho.⁴

Intetho yentiyo: kukupapasha ngabom, ukusasaza, ukuthethelela okanye ukudlulisela komnye umntu okanye abantu ngendlela enokuchazwa ikukuba nenjongo ecacileyo —

- (i) yokwenzakalisa okanye ukubangela ukuba kwenzakaliswe; okanye
- (ii) yokukhuthaza okanye ukusasaza intiyo,

³ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

⁴ The Prevention and Combating of Hate Crimes and Hate Speech Bill, 2018

esekelwe kwenye okanye kweziliqela kwezi zinto zilandelayo:

- (aa) ubudala beminyaka;
- (bb) ukuba yinkawu;
- (cc) ukuzalwa;
- (dd) umbala;
- (ee) inkcubeko;
- (ff) isiphene;
- (gg) imvelaphi ngokobuzwe okanye ngokwasentlalweni;
- (hh) isini;
- (ii) ukuba nentsholongwane kagawulayo;
- (jj) ulwimi;
- (kk) ilizwe angummi walo, ukuba ngumfudukeli okanye ukuba yimbacu;
- (ll) uhlanga;
- (mm) unqulo;
- (nn) isini, kuquka ukuzijika isini; okanye
- (oo) ukuthandana nabesini sakho .⁵

Ucalulo olungathanga ngqo: Imithetho, imigaqo-nkqubo okanye ukwenza okusengabonakala kungenabubi yaye kungacaluli kusengazala ucalulo.⁶

Izinto ezidwelisiweyo ekucalulwa ngazo: Zezo zinto ezixelwe kwisiqendu 9 soMgaqo-siseko .

Izinto ezingavumelekanga ukuba kucalulwe ngazo zezi--

(a) uhlanga, isini ngokwasentlalweni, isini ngokwendalo, ukukhulelwa, ubume ngokwasemtshatweni, imvelaphi ngokwesizwe okanye ngokwasentlalweni, ibala, isini sabantu athandana nabo, ubudala, isiphene, unqulo, isazela, inkolelo, inkcubeko, ulwimi nokuzalwa okanye

(b) nayiphi na enye into ekuthi xa ucalulo lusekelwe kuyo--

(i) ibangele okanye iqhubele phambili ukuba selishweni;

(ii) ithobe isidima sokuba ngumntu; okanye

⁵ The Prevention and Combating of Hate Crimes and Hate Speech Bill, 2018

⁶ City Council of Pretoria v Walker 1998 (2) SA 363

(iii) ichaphazele kakubi ukuxhanyulwa ngokulinganayo kwamalungelo neenkululeko okufana nocalulo olusekelwe kwisiqendu (a).⁷

Ucalulo lobuhlanga: Nakuphi na ukwenziwa komahluko, ukubukulwa, ukuthintelwa okanye ukukhethwa komnye kunomnye okusekelwe kuhlanga, kwibala, kumnombo, okanye kwimvelaphi yomntu ngokwelizwe lakhe okanye ngokwesizwe sakhe okunjongo yako okanye okunesiphumo esikukubhangisa ukugqalwa, ukuxhanyulwa okanye ukusetyenziswa kwelungelo neenkululeko ezisisiseko, ngokulinganayo, kupolitiko, kuqoqosho, entlalweni, kwinkcubeko okanye komnye umba wobomi eluntwini.⁸

Intiyo yobuhlanga: Kukubukulwa, ukucalulwa, okanye ukuchaswa komntu wohlanga olwahlukileyo okusekelwe kwinkolelo yokuba uhlanga alulo umntu lungentla kunezinye.⁹

Intiyo yabantu bamanye amazwe: Sisimo sengqondo sokuba nobutshaba kubantu abangengabo abelizwe lakho.¹⁰

⁷ Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

⁸ CERD, isiqendu 1

⁹ Oxford Living Dictionary

¹⁰ UNESCO <http://www.unesco.org/new/en/social-and-human-sciences/themes/internationalmigration/glossary/xenophobia/>

IZISHUNQULELO

ABAQULUNQI BOMGAQO-SISEKO Abaqulunqi BoMgaqo-siseko

I-CEDAW I-Convention on the Elimination of all Forms of Discrimination against Women (iSivumelwano Sokupheliswa Kwazo Zonke Iintlobo Zokucalulwa Kwabasetyhini)

I-CODESA I-Convention for a Democratic South Africa (iSivumelwano soMzantsi-Afrika weNtando yeSininzi)

I-CRPD iConvention on the Rights of Persons with Disabilities (iSivumelwano Ngamalungelo Abantu Abaneziphene)

ISEBE LOBUGCISA ISebe Lobugcisa Nenkcubeko

I-DDPA I-Durban Declaration and Programme of Action (iSibhengezo nesiCwangciso Sokuthabath' iNyathelo saseDurban)

ISEBE LOBULUNGISA ISebe Lobulungisa Nophuhliso LoMgaqo-siseko

ISEBE LOKUCWANGCISA ISebe Lokucwangcisa, Ukubek' Esweni Nokuhlola

ULUNTU LOQOQOSHO Uluntu Olukhuthelayo Kuqoqosho

UKUGONYAMELWA KWABESINYE ISINI Ukugonyamelwa kwabesinye isini

I-ICERD I-International Convention on the Elimination of All Forms of Racial Discrimination (iSivumelwano Samazwe Ngamazwe Sokupheliswa Kwazo Zonke Iintlobo Zocalulo)

I-LGBTI Lesbian, Gay, Bisexual, Transgender and Intersex (Abantu Abasini Simbaxa)

ISICWANGCISO IsiCwangciso seZwelonke Sokuthabath' Amanyathelo

ISICWANGCISO SOPHUHLISO IsiCwangciso seZwelonke soPhuhliso

I-PEPUDA *I-Promotion of Equality and Prevention of Unfair Discrimination Act, 2000* 4 ka-2000

IKOMISHONI YAMALUNGelo IKomishoni Yamalungelo Oluntu YaseMzantsi-Afrika

I-SARB iSA Reconciliation Barometer Survey

I-SEJA iSocio-Economic Justice for All

IKomishoni Yoxolelwaniso IKomishoni yeNyaniso noXolelwaniso

INKOMFA YOBUHLANGA iNkomfa yeHlabathi Echasene Nentiyo Yobuhlanga, Ucalulo Lobuhlanga, Intiyo Yabantu Bamanye Amazwe Nokunganyamezelani Okuyelele Apho

I-WPRPD I-White Paper on the Rights of Persons with Disabilities

“Akukho mntu ozalwa emthiyile omnye umntu ngenxa yebala lolusu lwakhe, okanye ngenxa yemvelaphi yakhe, okanye ngenxa yonqulo lwakhe. Abantu bayakufunda ukumthiya omnye umntu; ‘yabona ke ukuba bayakwazi ukukufunda ukumthiya, bangakufundiswa nokumthanda, kuba uthando lwakheka lula entliziyweni yomntu kunentiyo.”

uNelson Mandela

ISAPHLUKO 1: INTSHAYELELO NENJONGO YESICWANGCISO

1. UMzantsi-Afrika wamenywa ziZizwe Ezimanyeneyo ukuba usingathe iNkomfa Yesithathu Yehlabathi echasene neNtiyo Yobuhlanga, Ucalulo Lobuhlanga, Intiyo Yabantu Bamanye Amazwe Nokunganyamezelani Okuyelele Apho (“iNkomfa Yobuhlanga”), eyayingo-2001. Samenywa ngenxa yokuqondwa komzabalazo wabantu baseMzantsi-Afrika nxamnye nenkqubo yokwahlulwa-hlulwa kweentlanga nokuwelela kwelizwe kulawulo lwentando yesininzi, olusekelwe kwimigaqo yoMgaqo-siseko. KwiNkomfa Yobuhlanga kwabakho abameli bamazwe ali-160. INkomfa le yathi yamkela iDurban Declaration and Programme of Action (iDDPA) eyaba yimbali ebongoza “amazwe ukuba abe nemigaqo-nkqubo yelizwe lonke nescwangciso sokuthabath’ inyathelo aze asisebenzise ngaphandle kokulibazisa isesokulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, kuquka neziganeko eziyelele apho zokuhlaselwa kwabesini esithile”.¹¹

2. IDurban Declaration iyavuma ukuba—

- ucalulo lobuhlanga lukho kubantu bazo zonke iindawo;
- alikho ilizwe elingenayo intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, kwaye
- onke amazwe anjongene nocelelweni lokuphelisa ucalulo lobuhlanga.

IDurban Declaration ithi ukulungisa ezi ngxaki ngempumelelo kufuna ukuba ooRhulumente nabo bonke abantu basebenzisane ukuguqula izimo zengqondo, ukubenza bazi ngakumbi ngesibetho esiyintiyo yobuhlanga nocalulo lobuhlanga, kuze kumiselwe amaqumrhu akhethekileyo okulwa nayo aze omelezwe loo maqumrhu.

3. IsiCwangciso seZwelonke Sokuthabath’ iNyathelo (“isiCwangciso”) siba sisiseko sokuqhutyelwa phambili komgaqo-nkqubo opheleleyo ochasene nocalulo lobuhlanga kwaye sancedisa ooRhulumente ekufezeni iimbopheleleko zabo zamazwe ngamazwe zamalaungelo oluntu ezihlobene nokupheliswa kwentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho. Sixela iziphumo ezithile ezilindelekileyo kwaye sikwayinkqubo yokuhlanganisa ababandakanyekileyo ukuze babonise ngocelomngeni lokuphelisa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho.¹²

¹¹ Isiqendu 66 seDDPA

¹² Njengoko kufunwa yiDDPA, isiqendu 66

4. Injongo yesiCwangciso asikokuba sithabath' indawo yemithetho ekhoyo nemigaqo-nkqubo, koko kukuba **sincedise** imithetho yepalamente ekhoyo, imigaqo-nkqubo nezicwangciso ezithetha ngokulingana, ubulungisa nocalulo. IsiCwangciso siza kunika amacebo okubek' esweni iziganeko eziqhubekayo zentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, kuquka ukumisela iqela labantu lokusabela ngokukhawuleza, abaphethwe ngqo ngurhulumente naluluntu ngokubanzi, abasebenza njengesilinganiso sokuqonda ukuba zingakanani iziganeko, neemeko ezivumela ukuqhubeka kwawo la maqela, nokunikwa kwawo izixhobo okulungisa ezo ziganeko.
5. Ngaphezu koko, ngesiCwangciso kujongwe ukuba kuncedwe uMzantsi-Afrika ufezekise iimbopheleleko zawo zezivumelwano zamazwe ngamazwe nezengingqi, oko kukuthi, i-International Convention on the Elimination of All Forms of Racial Discrimination (i-ICERD), kwakunye neembopheleleko onazo ezizalwa yiNkomfa Yehlabathi Yesithathu YeZizwe Ezimanyeneyo Echasene Nentiyo Yobuhlanga, Ucalulo Lobuhlanga, Intiyo Yabantu Bamanye Amazwe Nokunganyamezelani Okuyelele Apho.

Kugxininiswa kakhulu kumaqela abantu aphambili

6. Ilungelo lamaqela abantu abazizisulu nabenziwe amakheswa lokuba baphile phakathi kwabantu abangacaluli ngobuhlanga, abangacaluli ngesini, nabangacaluli ngebala, ngohlobo lwabantu umntu athandana nabo, ngomnombo, ngemvelaphi yobuzwe, liye licelwe umngeni. Aba bantu bangabantu abaphambili abancedwe sisiCwangciso ngenxa yeenjongo zoMgaqo-siseko zokulingana nokungacaluli nemfuneko yokukhuselwa kwintiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okunjalo.
7. I-DDPA ifumanise la maqela abantu njengamaqela abantu amakakhuselwe:¹³ Abantu bomthonyama, ama-Afrika nabantu abamnombo wabo useAfrika; ama-Asia nabantu abamnombo wabo useAsia; abafudukeli; iimbacu nabantu abafuna ikhusi, amaxhoba okuthengiswa kwabantu; abantu abaphulukene namakhaya bengabakweli; amaRoma/Gypsy/Sinti/Abaseluhambeni; amaYuda; amaMuslim nama-Arabhu; abantu abangamagcuntswana kwilizwe labo nangokwesizwe sabo, ngokwenkolo nangokolwimi.
8. Esi siCwangciso sikwabeka phambili amaqela abantu abathi, ngaphandle kokuba ngamaxhoba okucalulwa ngobuhlanga, bajongane neentlobo eziliqela zokucalulwa, ezinjengezi:
 - ukuba ngamahlwempu ezilalini nasezidolophini;
 - ukuba ngabasebenzi basemaplasini nabahlali basemaplasini;
 - iimpulazikalujaca;
 - abafazi namantombazana;

¹³ "Developing National Action Plans against Racial Discrimination, a practical guide", UNHR, Office of the High Commissioner (2014) p81

- abantwana nolutsha;
 - abantu abangenalizwe lilelabo;
 - abasebenzi basemakhitshini;
 - abantu abaphila neHIV/AIDS;
 - abantu abaneziphene;
 - abantu abakhulileyo;
 - abantu abohluthwe inkululeko yabo;
 - abasetyhini abathandana nabasetyhini, amadoda athandana namadoda, abambaxa ngokwesini, abantu abazitshintshe isini,
 - nabantu abachatshazelwe ziimfazwe okanye ziintlekele zendalo.
9. Esi siCwangciso sisebenza kubo bonke abantu abangaphakathi kwemida yeli lizwe abanelungelo lokulingana nokungacalulwa. Kokubini uRhulumente nababandakanyekileyo abangenguye urhulumente banoxanduva olubangelwa kukuba abantu banelungelo lokulingana nokungacalulwa. Ngokuvumelana nenkolelo yokuba amalungelo oluntu akho kuyo yonke indawo, awanakwahlulwa, ahlobene, axhomekeke elinye kwelinye kwaye ayomelezana, esi siCwangciso sifuna ukuqinisekisa ukuba axhanyulwa onke amalungelo oluntu, kuquka amalungelo asentlalweni, awenkubeko, awopolitiko, nawaseluntwini. Esi siCwangciso siyayiqonda nento yokuba ilungelo lokulingana nokungacalulwa ngamalungelo anokunyhasheka naxa umntu engawabandezwanga amanye amalungelo — nto leyo ebalaselsiweyo kuMgaqo-siseko wethu.
10. Oorhulumente banoxanduva lokukhuthaza nokukhusela amalungelo oluntu nokuthintela ukunyhashwa kwawo. Oorhulumente banyanzelekile ukuba bayeke ukuphazamisana nokuxhanyulwa kwamalungelo amaxhoba ocalulo lobuhlanga. Oorhulumente bakwanyanzelekile ukuthintela ukunyhashwa kwamalungelo amaxhoba entiyo yobuhlanga nocalulo lobuhlanga nguRhulumente nangabanyhashi abangengorhulumente. Oorhulumente kufuneka bathabathe amanyathelo okususa nazihi na izithintelo ezinokuphazamisa ukuxhanyulwa kwelungelo lokungacalulwa ngohlanga, ngebala, ngomnombo, okanye ngemvelaphi yelizwe okanye yesizwe. Oku kuquka uxanduva lokwalela ucalulo kwiindawo zangasese.
11. Ukuphuhlisa nokumiselwa kwesiCwangciso kuba sisakhiwo semigaqo-nkqubo, iinkqubo, amacebo achuliweyo namanyathelo okulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, kwaye kuyindlela yokufeza imbopheleleko anayo urhulumente yokukhusela bonke abantu namaqela kwintyo yobuhlanga, kucalulo lobuhlanga, kwintyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho.

Apho sigxininise khona isiCwangciso ikakhulu

12. IsiCwangciso **sigxininise ikakhulu** ekulungiseni ingxaki yentiyo yobuhlanga elizweni lethu. Ukongezelela kumanyathelo akhoyo, injongo yesiCwangciso ikwakukulwa intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho nokulungisa oku kulandelayo:

- Ukukhuthaza ukuhlonelwa kwesidima sokuba ngumntu ngokukhuthaza nokukhusela amalungelo oluntu;
- Ukwenza abantu bazi ngokuchaswa kwentiyo yobuhlanga, ukulingana neengxaki zokuchaswa kocalulo ngamagosa aseburhulumenteni, luluntu olunjongo ithile naluluntu ngokubanzi, kufunwe inkxaso kubantu ngabantu, kulungiswe nemfuneko yokuthintela, ukulwa nokulungisa intiyo yobuhlanga;
- Ukukhuthaza ukuqokelelwa kwengcombolo ngentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho kuze kuvunyelwe ukuphononongwa okupheleleyo kweemfuno zabo ukuze ilwiwe ngempumelelo;
- Ukuqinisekisa ukuba iinkxalabo zabantu ngabanye namaqela abantu abadibana nentiyo yobuhlanga, nocalulo lobuhlanga, nentiyo yabantu bamanye amazwe;
- Ukwandisa ukuba yimpumelelo nokuxokomezelelana kwamacebo okulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, kuquka ubuncwane obuyimali nobungabantu;
- Ukutyala ukuzinkqamangela ekupheliseni intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho ngokusebenzisa iinkqubo ezinjongo yazo ikukufikelela iziphumo ezinokufikeleleka;
- Ukomeleza iinkqubo zabantu ngabanye namaqela abantu abadibana nentiyo yobuhlanga, nocalulo lobuhlanga, nentiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho kwimfundo, kwimpilo, kwingqesho, ekwakhiweni kwezindlu, ekukhuselekeni kokutya, kwiinkonzo zasentlalweni nasekufikeleleni kubulungisa, kuquka, apho kuyimfuneko khona, nokusebenzisa amacebo afanelekileyo okulungisa imeko;
- Ukwenza lula ukufunyanwa kwemithetho yepalamente efuna ukwenziwa utshintsho okanye ukwamkelwa ngenjongo yokuphucula ukukhuselwa kwamaxhoba, kwakunye
- Nokwakha uluntu olulinganayo kuze komelezwe ukongama komthetho nolawulo lwedemokrasi.

ISAHLUKO 2: XA SIJONGA IMBALI

13. Isizwe saseMzantsi-Afrika siyintlanganisela yembali, ubuntu bethu nenkcubeko, ezibonisa iimvelaphi, ukwahluka-hlukana nokudityaniswa kwakhona kwabantu kwisithuba samakhulu amawaka eminyaka, eye yaba nongquzulwano olunogonyamelo, ukohluthwa izinto ebesinazo nokucinezelwa kupolitiko. Endaweni yokumanyana ukuze kwakhelwe phezu kweziseko ezisele zikho zabemi abahluka-hlukeneyo benxalenye esezantsi yeAfrika, abaphambukeli abavela eYurophu basebenza nzima ukwakha iqonga lokulwela iimfazwe ezikrakra besilwa bodwa befuna ukoyisa, ukuba nentabalala yezinto nokucinezelwa ngopolitiko koninzi lwabantu bomthonyama balo mhlaba. Bakuba belwe iimfazwe ezininzi, ukoyiswa kwama-Afrika ngo-1906, kwiMvukelo yaseBhambatha, kwaba yinzame yokugqibela yabantu bomthonyama yokuxhathisa ngokumanyeneyo nxamnye nokucinezelwa ngamakoloniwali.

14. Ubukoloniyal bakhokelela ekucinezelweni kwabantu baseAfrika, amaKhoi namaSan, ababengamaxhoba amaphulo okubulawa, kwakunye nabantu baseMalaysia nabaseIndiya ababesetyenziswa ekwakheni iziseko zoqoqosho zokulawulwa ligcuntswana labamhlophe. Isiseko esiyimizimveliso ephucukileyo yamakoloniyal asemagunyeni, esathi senza ukuba oko kucinezelwa kube nokwenzeka, kwangenisa eMzantsi-Afrika ukusetyenziswa kweendlela ezihambele phambili zemveliso yoqoqosho norhwebo ezazingqiyame ngokusebenzisa amakhoboka emsebenzini engawomthonyama kweli kwanavela eAsia. Yile mbali enzima edlulileyo eqhubekayo ebangela imeko yasentlalweni neyoqoqosho ekhoyo eMzantsi-Afrika.
15. Phantsi kobukoloniyal nocalulo, abantu abantsundu¹⁴ babecinezelwa, besohluthwa umhlaba wabo nezinye iindlela zokuziphilisa baza bohluthwa amalungelo abo asisiseko okuba ngumntu, kuquka nelungelo lokuvota nenkululeko yokuhamba-hamba nokuzimanya. Ucalulo lobuhlanga lwalungqiyame ekukhutshelweni ngaphandle kwabantu abantsundu kupolitiko, oko kwabangela ukuhlwempuzeka kwabo kuqoqosho kwaye abaninzi babekhutshelwa ngaphandle nasekubeni kurhulumente omele abantu, bengawanikwa namalungelo amaninzi neenyhweba ezazixhanyulwa ngabemi abamhlophe beli. Imithetho yepalamente enobuhlanga eyaphunyezwa ngeminyaka yoo-1920 neyoo-1930 yalunabisa ngakumbi ucalulo lobuhlanga. Ukwamkelwa kokwahlulwa-hlulwa kweentlanga ngo-1948 kwakusithiwa kwenzelwa ukuba iintlanga 'zikhule ngokwahlukana', kodwa yona inyaniso ikukuba kwakusenzelwa ukugcina igcuntswana labamhlophe likwinyhweba. Ukwahlulwa-hlulwa kweentlanga kwachaphazela ngqo inxalenye nganye yobomi bomntu — ukuthi bavumeleke ukuba bahlale phi, ukuthi bavumeleke ukuba batshate nabani, ukuthi bangazimanya nabani, ukuthi zeziphi iinkonzo zikarhulumente abanokuzifumana, ukuba zikho kwa-ukubakho phofu. Singabantu abathetha iilwimi ngeelwimi, kodwa phantsi kolawulo lokwahlulwa-hlulwa kweentlanga, ukucinezelwa kweelwimi zaseAfrika kwakuyinto ehambisana ithe nca nokucinezelwa kohlanga lolunye.
16. Ucalulo lobuhlanga lwabangela ipolitiki yoqhankqalazo neyokuxhathisa eMzantsi-Afrika ukususela kwiminyaka engasekupheleni kwee-1940 yaza yaqina ngakumbi emva ko-1976. Uninzi lwabantu ababecinezelwe baseMzantsi-Afrika bahlanganisana baba yimbumba exhathisa okokoko, ebandakanya imibutho yopolitiko, imibutho yabasebenzi, amagunya akwantu namacandelo ngamacandelo oluntu. Umzabalazo nxaanye nokwahlulwa-hlulwa kweentlanga womelezwa kwamanye amazwe zizenzo zemibutho eyimbumba yamazwe ngamazwe. Ukususela kwiminyaka ephakathi ukuya kwengasekupheleni yoo-1980 urhulumente wokwahlulwa-hlulwa kweentlanga wajamelana nokwenziwa ikheswa ngakumbi nangakumbi kuqoqosho nakuzakuzelwano lwamazwe, nto leyo eyabangela ukuma ngxi kuqoqosho, laba likhulu ityala analo urhulumente, kananjalo zaya zisiba lilize iinzame zamapolisa nezenkqubo yobulungisa ukukukhusela ukwahlulwa-hlulwa kweentlanga. Kwathi kuba yiminyaka yangasekupheleni koo-1980 labe ilizwe selingasalawuleki, lidlavuzwe kukwahlulwa-hlulwa kweentlanga nakukufadalala kuqoqosho.

¹⁴ abaNtsundu, abeBala namaIndiya

17. Ukufika kolawulo lwentando yesininzi ngo-1994 kweza nenkqubo entsha yentlalo. IConvention for a Democratic South Africa (CODESA) yakhokelela kuvoto lokuqala lwentando yesininzi ngo-1994 nokuqulunqwa koMgaqo-siseko weXeshana.
18. Ukubhalwa koMgaqo-siseko omtsha woMzantsi-Afrika wentando yesininzi kwakuza kuba lelona xesha libalulekileyo lokwenziwa kwenguqu kwilizwe lethu. UMgaqo-siseko weXeshana ka-1993 noMgaqo-siseko weRiphabliki yoMzantsi-Afrika ka-1996 waba kukuphuma kwekhwezi lolawulo olutsha loMgaqo-siseko apho uMgaqo-siseko waba ngumthetho owongamileyo welizwe. Ukuwela ukusuka kulawulo lokwahlulwa-hlulwa kweentlanga ukuya kuMzantsi-Afrika wentando yesininzi kwaba sisivumelwano ekuthetha-thethweneyo ngaso apho cala ngalinye kwafuneka livume ukuncama izinto ezithile, nto leyo eyathi yenza ukuba kungabikho owoyisileyo okanye owoyisiweyo. Ngenxa yoko, abazange batshutshiswe ababeziinkokeli okanye ababezii-arhente zolawulo lokwahlulwa-hlulwa kweentlanga ngenxa yolwaphulo-mthetho abalwenzayo lokwahlulwa-hlulwa kweentlanga. Ndaweni yoko kwamiselwa iKomishoni yeNyaniso noXolelwaniso ithwaliswe umsebenzi wokuba kubekho uxolelwano kwaye yongamele ukuxolelwa kwabo babewanyhashe kanobom amalungelo oluntu ngeminyaka yokwahlulwa-hlulwa kweentlanga.
19. Unyulo lokuqala lwentando yesininzi olwaba ngowama-27 kuEpreli 1994 lwaba nesiphumo sokuba kuthunyelwe kwiNdlu yoWiso-mthetho amakhulu amane abameli babantu nabangamashumi alithoba kwiNdlu yeeNgwevu. Xa ehleli kunye la maqumrhu mabini aba yinto ekuthiwa liQummrhu loMgaqo-siseko elalisandul' ukusekwa eligunyazwe sisiqendu 68(1) soMgaqo-siseko weXeshana. IQumrhu loMgaqo-siseko lalifunwa nguMgaqo-siseko weXeshana ukuba libhale uMgaqo-siseko wokugqibela lize liwuphumeze ingekapheli iminyaka emibini lihleli okokuqala iQumrhu loMgaqo-siseko. UMgaqo-siseko wokugqibela kwakufuneka ukuba uhambisane nemiGaqo yoMgaqo-siseko engamashumi amathathu anesine ekwakuthetha-thethwene ngayo kwaza kwavunyelwana ngayo ngamaqela ngexesha leNkqubo Yokuthetha-thethana kwamaQela ngamaQela eKempton Park. INkundla yoMgaqo-siseko eyayisandul' ukusekwa kwafuneka ukuba iqinisekise ukuba kuhanjiswa kusini na nale migaqo okanye akunjalo.
20. Ukubhalwa koMgaqo-siseko wokugqibela kwafuna umgudu omkhulu. Ngaphandle kwezimvo ezavakaliswa ngamaqela opolitiko, kwafunyanwa izimvo ezizizigidi ezibini zivela kuluntu ngokubanzi nakumaqela asentlalweni. Kwabakho iintlanga ezininzi zokuphula uluntu neentlanganisano zokuncazelan' ulwazi.
21. NgoSeptemba 1994, iQumrhu loMgaqo-siseko lamisela iiKomiti Eziphambili ezintandathu ezamilisel' ingqalelo kwimiGaqo yoMgaqo-siseko engamashumi amathathu anesine ezathi zaqinisekisa ukuba izimvo ezifakelwe kuMgaqo-siseko wokugqibela ziyavisisana nale migaqo. IKomiti Ephambili nganye yayincediswa ziingcali ezikwiKomiti yobuChwepheshe.¹⁵

¹⁵ IKomiti Ephambili yoku-1 yayinikwe umsebenzi wokuhlulisa ubunjani belizwe lwentando yesininzi. IKomiti Ephambili yesi-2 yayijonga ubume bukarhulumente. IKomiti Ephambili yesi-3 yayinikela ingqalelo kubudlelane phakathi koorhulumente bamanqwanqwa ngamanqwanqwa. IKomiti Ephambili yesi-4 yayihlulisa amalungelo asisiseko, ngoxa yona iKomiti Ephambili yesi-5 yayinikel' ingqalelo kwiinkundla nasekusebenzeni komthetho. IKomiti Ephambeneyo yesi-6 yayihlulisa izakhiwo ezikhethekileyo zikarhulumente kwaye yayahlulwe yaba zezinye iikomiti ezincinane ezingaphantsi

22. Inkalo ebalulekileyo ekubhalweni koMgaqo-siseko wokugqibela kwaba kukumiselwa kwesiGqeba Esizimeleyo seeNgcali zoMgaqo-siseko ngokwesiqendu 72 soMgaqo-siseko weXeshana, esasithunywe ukuba sicebise Abaqulunqi boMgaqo-siseko noosihlalo beeKomiti Eziphambili, size sisombulule ukungaboni ngaso-nye.
23. Ngo-Oktobha 1995, kwaveliswa umbhalo oseluvavanyo wokuqala woMgaqo-siseko wokugqibela ukuze uqwalaselwe liQumrhu loMgaqo-siseko. Wavunywa ngaBaqulunqi boMgaqo-siseko waza wapapashwa ngomhla wama-22 kuNovemba 1995. Kwashicilelwa iikopi ezingaphezu kwezigidi ezine zomGaqo-siseko oseluvavanyo zaza zasasazwa zikwimo yamaphephandaba. Uluntu lwanikwa iinyanga ezintathu ukuba luvakalise izimvo.
24. Kwathi kuba nguFebruwari 1996 kwabe kufumaniseke ukuba zazingama-65 ubuncinane iingxaki ezazingasombululekanga ezazimalunga nombhalo oseluvavanyo nokuxing' etyeni kwabepolitiki kwiingxaki ezimbalwa ezingundoqo. Umbhalo wesine oseluvavanyo woMgaqo-siseko wokugqibela wapapashwa ngoMatshi.
25. Abantu bothetha-thethwano badibana eArniston eNtshona-Koloni ngoEpreli 1996 kwaza kwaveliswa umbhalo oseluvavanyo wesihlanu woMgaqo-siseko wokugqibela ngoEpreli 15. Amaqela ayenexesha elingangeveki lokuba avumelane ngokubhaliweyo ngawo ngaphambi kokubetha komhla wokugqibela ekwakufuneka ngawo ukuba uthiwe thaca phambi kwaBaqulunqi boMgaqo-siseko. Oku kwabangela ukuba kubekho iingxoxo zamacala amabini, iingxoxo zamacala amaninzi neentlanganiso zeekomiti ezingaphantsi kwezinye. Kwintlanganiso eyatsala iiyure ezingamashumi amabini anesibini eyaqala ngoEpreli 18, kwafikelelwa kwisivumelwano esibhaliweyo ngoMgaqo-siseko nangentshayeleyo yawo.
26. IKomiti yoMgaqo-siseko kwafuneka ukuba iqwalasele izimvo ezingama-298 zokwenza utshintsho kuMthetho Oyilwayo owathiwa thaca ngamaqela ngamaqela. Nangona kwasekusele nje iveki ngaphambi kokuba kubethe umhla wokugqibela wokuba uphunyezwe umgaqo-siseko wokugqibela, kwakungekabikho kuvumelana ngesiqendu esithetha ngomhlaba nezakhiwo, ngemfundo nangemisebenzi. Ngomhla wesi-6 nowesi-7 kuMeyi, Abaqulunqi boMgaqo-siseko badibana ukuze bawuxubushe okokugqibela uMthetho Oyilwayo ngeli xesha zona iingxoxo ezimacala mabini zaziqhubeka. Ngobusuku bukaMeyi 7, kwagqityelwa kuvunyelwene ngombandela wemfundo.
27. NgoMeyi 8, 1996, uMgaqo-siseko wokugqibela waphunyezwa ngaBaqulunqi boMgaqo-siseko. Ekugqibeleni, zaba ngama-421 iivoti eziwuvumayo uMgaqo-siseko. Lo Mthetho Oyilwayo wathunyelwa kwiNkundla yoMgaqo-siseko ukuze uhlolwe ubunjani bawo ukhutshelwe nesiqinisekiso. INkundla yoMgaqo-siseko yachopha iintsuku ezilithoba iphulaphule ukuqalela kuJulayi 1. Kwabekwa phambi kwenkundla izimvo ezibhaliweyo neengxoxo zomlomo ngamaqela opolitiko amahlanu, aza aba ngamashumi asibhozo anesine amaqumrhu angengawepolitiki awathi aphikisa. Amaqela angamashumi amabini anesixhenxe avunyelwa ukuba enze iingxoxo zomlomo phambi kweNkundla.

28. NgoSeptemba 6 iNkundla yoMgaqo-siseko yavakalisa isigqibo esasifumanise ukuba imiGaqo yoQulunqo-Mgaqo-siseko yayingalandelwanga kwezinye iziqendu. Ezinye zeziqendu ezingazange ziphumelele xa zihlolwa kwaba zezo ezimalunga nelungelo lomqeshi lokuba abandakanyeke kuthetha-thethwano lwamaqela amele abasebenzi; ukukhuselwa okwaneleyo kwamalungelo asisiseko; ukuzimela geqe nokungathathi cala koMkhuseli woLuntu noMtshutshisi Omkhulu; iKomishoni yeNkonzo yasebuRhulumenteni; isakhiwo namagunya karhulumente wasekuhlaleni kwakunye namagunya amaphondo nemisebenzi yawo. Ngo-Oktobha 11 Abaqulunqi boMgaqo-siseko bawuphumeza umbhalo owenziwe utshintsho. Emva kokuchophela iintsuku ezintathu okwaqala ngoNovemba 18, iNkundla yoMgaqo-siseko yawuqinisekisa njengolungileyo umbhalo owenziwe utshintsho ngoDisemba 4. NgoDisemba 10, 1996, uMongameli Nelson Mandela watyikitya uMgaqo-siseko wokuqala woMzantsi-Afrika wentando yesininzi waba ngumthetho eSharpeville. UMgaqo-siseko waqala ukusebenza ngoFebruwari 4, 1997.
29. Ngokubakho kwesakhiwo esitsha somgaqo-siseko, somgaqo-nkqubo nesemithetho yepalamente, yaba ke iyachithwa-chithwa inkqubo yokwahlulwa-hlulwa kweentlanga kwaza kwabekwa isiseko selizwe lentando yesininzi neliquka wonk' ubani elisekelwe kwimigaqo yesidima sokuba ngumntu, kumalungelo oluntu, kwinkululeko, ekungacalulini ngohlanga, ekungacalulini ngesini nasekongameni komthetho. Ukuze kwenzeke oku, ilizwe lentando yesininzi kwafuneka ukuba lisebenzele uxolelwaniso nokumanyana koluntu lize liqinisekise ukuba amalungiselelo enziwe okuqubisana neentsalela ezishiywe kukwahlulwa-hlulwa kweentlanga kuze kulungiswe ukungalingani kwexesha elidlulileyo.
30. Kwintetho kaMongameli Nelson Mandela kuBaqulunqi boMgaqo-siseko xa kwakusamkelwa uMgaqo-siseko Omtsha ngo-1996, wachaza uhlobo lwabantu uMzantsi-Afrika owawuzama ukulwakha. Wathi uMgaqo-siseko wawu—

“ngumnikelo wethu ongephi kwintando yesininzi nakwinkcubeko yamalungelo oluntu ehlabathini jikelele; kwaye siyazinqamangela kubantu ngokubanzi ngelithi akukho nto eya kusiphambukisa kule ndlela. Wonke umntu uya kuqonda ukuba sinokuzibophelela nokuthunywa okuvela kuninzi lwabantu bakowethu kweli lizwe kokuba siwuguqule uMzantsi-Afrika usuke ekubeni lilizwe lokwahlulwa-hlulwa kweentlanga ube lilizwe elingacaluli ngobuhlanga, kulungiswe ingxaki yokungaphangeli neyokungabi namakhaya, ukwakha zonke izinto eziluncedo ebezixhanyulwa iinkulungwane zeminyaka ligcuntswana labantu. Sifuna amadoda nabafazi abazibopheleleyo kwinto esiyithunyiweyo, kodwa abakwaziyo ukuyeka ukucinga ngesizwe sabo nje kuphela, koko bacinge ngoMzantsi-Afrika uphela.”¹⁶

¹⁶ Intetho eyayibhekiswe kwiQumrhu loQulunqo-Mgaqo-siseko xa kwakusamkelwa uMgaqo-siseko Omtsha, ngoMeyi 1996

ISAHLUKO 3: INTANDO YESININZI – NGABA YABA SISIPHELO SAZO ZONKE IINTLOBO ZOCALULO?

31. Ukufika kwentando yesininzi eMzantsi-Afrika ngo-1994 kwangenisa inkcubeko yamalungelo oluntu njengentsika yolawulo olutsha loMgaqo-siseko kwakunye nodederhu olude lwamalungelo oluntu, aquka amaluneglo asentlalweni nawoqoqosho, awathi abhalwa kuMqulu wamaLungelo aza aqukwa kuMgaqo-siseko weXeshana aza aphindwa kuMgaqo-siseko wokugqibela ka-1996. UMqulu wamaLungelo usebenza kokubini phakathi kukarhulumente nabantu naphakathi kwabantu bebodwa kwaye uyintsika yentando yesininzi eMzantsi-Afrika. Ngenxa yesi sizathu, ukhuselwa ngokukhethekileyo kwaye imithetho eyilwayo eyenza utshintsho kuMgaqo-siseko ifuna isininzi esisibini kwisithathu kwiNdlu yoWiso-Mthetho kwakunye nenkxaso yeevoti zamaphondo amathandathu kumaphondo alithoba amelwe kwiBhunga lamaPhondo leZwelonke. Namhlanje iinkundla zethu ziqinisekisa ukukhuselwa kwemigaqo esisiseko yoMzantsi-Afrika enjengesidima sokuba ngumntu, ukulingana nokongama koMgaqo-siseko. Namhlanje sifuna ukuba yonke into esiyenzayo ivumelane nemigaqo yoMgaqo-siseko wethu — sisebenzisa uMqulu wamaLungelo njengesilinganiso sokulinganisa ukuzuzwa kwamalungelo oluntu.
32. Ukwamkelwa koMgaqo-siseko ngo-1996 kwaba kukutshintshwa kwekhasi kwimbali yeli lizwe. Kuye kwabizwa ngokuba “sisiqinisekiso sokuzalwa” soMzantsi-Afrika omtsha — uMzantsi owahluke kakhulu kulowo obukho ngaphambili. Ilungelo eliqinisekiswa nguMgaqo-siseko lokulingana nokukhuselwa ngokulinganayo ngumthetho nokuzuza ngokulinganayo kuwo kufuneka kuqondwe kukhunjulwa imbali yeli lizwe yokungalingani, intiyo yobuhlanga, nokucalulwa ngokwesini. Ukuzimisela kwethu ukwakha isizwe sentando yesininzi esingacaluli ngohlanga, esingacaluli ngesini kusukela kwimbali yethu embi yexesha elidlulileyo. Ewe kona, uMgaqo-siseko awuzange ufike ngequbuliso okanye ngomlingo: usisiqhamo sothetha-thethwano olwatsala ixesha elide, kwanembali ende neneenkathazo ngaphambi koko. Uninzi lwemicamango equlethwe kuwo isisiphumo seminyaka yomzabalazo. Ngokwamazwi yowayefudula eyiJaji eyiNtloko uMahomed —

“Kwamanye amazwe uMgaqo-siseko uba yindlela nje engqalileyo, engumthetho, yokudibanisa imigaqo ekuvunyelenwe ngayo neminqweno eye yaman’ ukubakho ukusuka kwixesha elidlulileyo elizinzileyo elingaqhawu-qhawukanga ukulungiselela iimfuno zexesha elizayo. UMgaqo-siseko waseMzantsi-Afrika wahlukile: kwizinto zexesha elidlulileyo ugcina kuphela ezithethelelekayo nezibonisa ukwahlukana okucacileyo nokuchaswa kwezinto zexesha elidlulileyo ezizezentiyo yobuhlanga ngendlela eziintloni, ezibubuzwilakhe, ezikukungabakhathaleli abanye abantu, nezicinezelayo, nokuqondwa ngamandla nokuzibophelela kwimigaqo yentando yesininzi, esebenza konke, enenkathalo, eyokulingana kwabo bonke abantu exelwe ngokucacileyo kuMgaqo-siseko. Umahluko ucacile kwaye mkhulu phakathi kwexesha elidlulileyo ofuna ukuliphosa kwelokulibala nexesha elizayo ofuna ukuba isizwe sizimisele ngalo.”¹⁷

¹⁷ S v Makwanyane, 1995 (6) BCLR 665, isiqendu 262

33. Isiqendu esithetha ngokulingana (isiqendu 9) sisisiseko samanye amalungelo akwiSahluko 2 soMgaqo-siseko, njengoko sisithi makubekho “ukuxhanyulwa okupheleleyo nokulinganayo kwawo onke amalungelo neenkululeko.” Isiqendu 9 siyakwalela ukucalulwa okungafanelekanga okusekelwe kwizizathu ezithile ezidwelisiweyo.
34. **Ucalulo** luhlobo oluthile lokwenza umahluko — kukwenza umahluko ngezizathu ezingafanelekanga. Oku kuthetha ukuba ucalulo olusekelwe kwesinye sezizathu ezidweliswe kwisiqendu 9(3) luthathwa ngokuthi lucalulo olungafanelekanga, de kuziwe nobungqina obubonisa ukuba lufanelekile. Ngoko ke kuthathwa ngokuthi ukwenza umahluko okusekelwe kwizizathu ezidwelisiweyo kuza kubathwalisa ubunzima abo bebengamaxhoba ocalulo lwexesha elidlulileyo okanye kuza kusithoba isidima esibalulekileyo sabo bachaphazelekileyo. Izizathu ezidwelisiweyo luhlanga, ibala, imvelaphi ngokwesizwe, isini somntu ngokwendlela ajongwa ngayo entlalweni, isini somntu ngokwendlela odalwe ngayo umzimba wakhe, ukukhulelwa, uhlobo lwabantu athandana nabo umntu, ubume bomntu ngokwasemtshatweni, ubudala, isiphene, unqulo, isazela nenkolelo, inkcubeko nolwimi, ukuzalwa nemvelaphi ngokwasentlalweni.
35. **Ukuxokomezelelana** kudlala indima ebalulekileyo ekulungiseni imizila yocalulo yexesha elidlulileyo. Xa kuchazwa ngeyona ndlela ilula, ukuxokomezelelana kumalunga nezinto ngezinto ezidlala indima kucalulo oluthi luviwe ngumntu. Kubhekisela “ekuhlanganisaneni” kwezinto zasentlalweni ezinjengesini, uhlanga, umgangatho ebomini, ubuchule, unqulo, ubuzwe, uhlobo lwabantu umntu athandana nabo. Esi “sakhiwo” sinokusetyenziswa ukuqonda indlela iintswela-bulungisa ezicwangcisiweyo nokungalingani eluntwini ezenzeka ngayo kumanqanaba ngamanqanaba. Ngokwengcamango yokuxokomezelelana ingcinezelo enjengentiyo yobuhlanga, ikucalulwa ngokwesini nentiyo yabantu abathandana besisinye esinye asizozinto ezizimele geqe. Endaweni yoko ezi zinto zihlobene kwaye zivelisa inkqubo yengcinezelo ethi izala “ukuxokomezelelana” kweentlobo eziliqela zocalulo.¹⁸
36. UMqulu wamaLungelo kuthiwa uyinxalenye yoMgaqo-siseko ebuchaphazela kakhulu ubomi kweli lizwe. Nanjengoko amazwi okuqala esi sahluko esithi: *“Lo Mqulu wamaLungelo ulilitye lembombo lentando yesininzi eMzantsi-Afrika. Uqulethe amalungelo abo bonke abantu elizweni lethu kwaye uqinisekisa isidima sokuba ngumntu, ukulingana nenkululeko yentando yesininzi.”*
37. UMzantsi-Afrika uphumeze imithetho eliqela ngenjongo yokuphumelelisa iinjongo zawo zoMgaqo-siseko zokuba kuzuzwe ukulingana, isidima sokuba ngumntu nokuqhutyelwa phambili kwamalungelo oluntu neenkululeko. Kuma-20 okuqala eminyaka yentando yesininzi kuye kwaphunyezwa yiPalamente imithetho engaphezu kwe-1 200 kwenziwe notshintsho kweminye ngenjongo yokukuchitha-chitha ukwahlulwa-hlulwa kweentlanga nokuphelisa zonke iintlobo zocalulo. Imithetho yepalamente emitsha neyenziwe utshintsho iye yaqulunqwa ngenjongo yokunyanzelisa ukulingana nokuthintela ucalulo, umzekelo,

¹⁸ Puleng Segalo, “Gender, social cohesion and everyday struggles in South Africa”, [Psychology in Society](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1015-60462015000200006)
On-line version ISSN 2309-8708, Psychol. Soc. n.49 (2015)
(http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S1015-60462015000200006)

njenge-Employment Equity Act ka-1998,¹⁹ iPromotion of Access to Information Act ka-2000,²⁰ iPromotion of Administrative Justice Act ka-2000²¹ nePromotion of Equality and Prevention of Unfair Discrimination Act ka-2000.²²

38. Nangona kunjalo bekuya kuba bubudenge ukulindela ukuba neyona mithetho ebhalwe kakuhle kunene ingaphelisa amashumi-shumi eminyaka neenkulungwane zeminyaka yengcinezelo nentiyo yobuhlanga ebiseyisisiqhelo nocalulo. Iintsalela ezishiywe kukwahlulwa-hlulwa kweentlanga nabubukolonyali zisasele. Kunjengokuba owayenguMongameli uThabo Mbeki wathi ngo-1998 —

“UMzantsi-Afrika lilizwe lezizwe ezibini. Esinye sezi zizwe simhlophe, sichumile noko, kungakhathaliseki ukuba ukuba sisisephi isini okanye sikweyiphi ingingqi. Sifikelela lula kuqoqosho oluphuhlileyo, kwizibonelelo eziphathekayo, ezemfundo, ezonxibelelwano nezinye. Oku kwenza ukuba eso sizwe sithi, ngaphandle nje kokuzingisa kokucalulwa kwabesini esingabasetyhini, bonke abangabesi sizwe bangakwazi ukusebenzisa ilungelo labo lokufumana amathuba alinganayo, amathuba ophuhliso owathi uMgaqo-siseko ka-’93 wankqamangela ilizwe lethu kuwo.

Isizwe sesibini nesikhudlwana soMzantsi-Afrika sintsundu kwaye singamahlwempu, abona bachaphazeleke kanobom kungabafazi abasezilalini, abantu abantsundu xa bebonke kwakunye nabagokekileyo. Esi sizwe siphila kwiimeko zezibonelelo ezisesemva kakhulu zoqoqosho, zokuphathekayo, zemfundo, zonxibelelwano nezinye. Phantse alukwazi ukusebenzisa into ekuthiwa lilungelo lokulingana nabanye, elo lungelo kube kulilungelo elingenako ukufezeka.

Obu bukho bezizwe ezibini, ezahlulwa kukuqhutyelwa phambili kukungalingani ngokohlanga, ngokwesini, okubangelwe lixesha elide lolawulo lwabamhlophe lobukolonyali lokwahlulwa-hlulwa kweentlanga, buba sisiseko esinyanzelisa ingcamango yokuba, ngenene, asisiso isizwe esinye, koko ezibini.”

39. Kwenziwe inkqubela enkulu kumashumi amabini eminyaka yenkululeko — kodwa kusekuninzi okufuna ukwenziwa. Kungokunje kusekho imicelimngeni ekufuneka sijamelane nayo. Uluntu lwaseMzantsi-Afrika luseziintlabazahlukane. Zininzi izikolo, imimandla yokuhlala neendawo zokunqula ezidibanise iintlanga, kodwa zininzi nezingenzanga njalo. UMzantsi uselelinye lamazwe anoqoqosho olungalinganiyo ehlabathini. Inyhweba efumaneka ngokuba luhlanga oluthile, ngokuba kumgangatho othile entlalweni nangokuba ngowesini esithile ayikapheli ngokupheleleyo. Eminye yemizekelo, exutyushwa apha ngezantsi, isibonisa iintsalela ezisaseleyo zokwahlulwa-hlulwa kweentlanga.

¹⁹ Act No 55 of 1998

²⁰ Act No 2 of 2000

²¹ Act No 3 of 2000

²² Act No 4 of 2000

ISAPHLUKO 4: SIXATYANISWA YINTONI? UKUZAMA-ZAMANA NOONDONAKELE

40. Ubuhlwempu nokungalingani okusisiseko sokungalingani kweentlanga kungoondonakele ekuza kufuneka uMzantsi-Afrika uzama-zamane nabo ukuze woyise iintsalela esazishiyelwa kukwahlulwa-hlulwa kweentlanga. Abantu abeva ubuhlwempu nokungalingani nje kuphela okumiliselekileyo nokucwangcisiweyo, kodwa kwiimeko ezininzi, bakuva nakucalulo oluziindlela ngeendlela kananjalo.
41. UMzantsi-Afrika uzama-zamana hayi nje kuphela nentiyo yobuhlanga emiliselekileyo, kodwa kwanokungakwazi ukunyamezela umntu othile. Ngoko ke asiyonjongo yesi siCwangciso ukuqubisana nokungalingani okumiliselekileyo njengoko urhulumente enezinye iindlela ezinjengoMqulu wamaLungelo, imithetho yepalamente yeli lizwe, kwakunye nezivumelwano ngezivumelwano zamazwe ngamazwe nezivumelwano ezibhaliweyo zamazwe ngamazwe ezinjongo yazo ikukuqubisana nezinto ezinjalo.
42. Malunga nokubukulwa kweentlanga nokucalulwa kwazo, sinemithetho yepalamente engqalileyo enjengePEPUDA²³ ne-*Employment Equity Act*.²⁴ Uninzi “Iweengxaki ezingoondonakele” — ezinjengobuhlwempu, umhlaba, ukubonelelwa ngezindlu — zihambisana nentiyo yobuhlanga, nocalulo lobuhlanga, nentiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, yaye ke ngoko kukho imfuneko yokuyomeleza ngokubhekele phaya imigaqo-nkqubo neenkqubo ezikhoyo.
43. Ngoko ke esi siCwangciso sikho sikwisakhiwo semeko ekhoyo, apho sigxininisa kwintyo yobuhlanga, ngaphakathi kwesicwangciso sokuthabath’ amanyathelo esikhudlwana, esikwaquka iPEPUDA nemithetho yepalamente ecetywayo yezenzo zolwaphulo-mthetho lwentiyo.

Umhlaba

44. Umhlaba ungumbandela ophakamis’ imimoya gqitha eMzantsi-Afrika “nofuna ukuba sibheke emva embalini ukuze sijongane neenyaniso ezingemnandi ezimalunga nathi ”.²⁵
45. Ukungabi namhlaba kuyingcambu yokungalingani kuqoqosho nokungabi nanto koninzi lwabantu baseAfrika eMzantsi-Afrika. Xa kujongwa ukuba ngoobani abangabanini bomhlaba kusabonakala iintswela-bulungisa kwezoqoqosho obunembali yobukoloniyali nokwahlulwa-hlulwa kweentlanga. Nangona urhulumente wentando yesininzi enze iinkqubo zokubuyiselwa umhlaba, uninzi lwabantu abantsundu basahlala ezilalini nakwiindawo

²³ The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000)

²⁴ The Employment Equity Act, 1995 (Act 55 of 1998)

²⁵ Nzimande, “*Land Question: It’s about identity*”, Mail & Guardian, 28 Feb 2018 (<https://mg.co.za/article/2018-02-28-land-identity-white-guilt>)

zokungcuchalaza ezixineneyo, bengenawo umhlaba onemveliso. Basakhutshelwe ngaphandle ekubeni ngabanini bomhlaba oxabiso lawo liqingqwe yibhanki kwanomhlaba wokuba ngumfama orhwebayo nokuba noshishino olubhadlileyo. Oku kubabekela imida ebuhlungu abantu abantsundu ekukwazini kwabo ukuba ngabavelisi nasekukwazini kwabo ukudala ubutyebi baze baphume kwisabatha sobuhlwempu.

46. Emva kweenkulungwane zeminyaka zolawulo lobukolonyali namashumi-shumi eminyaka olawulo lokwahlulwa-hlulwa kweentlanga, uMzantsi-Afrika wentando yesininzi waqalisa ukwaba ngokutsha amalungelo omhlaba njengendlela yokunyanga intswela-bulungisa yobuhlanga yexesha elidlulileyo nokwandlala isiseko sophuhliso oluthe ukuba nobulungisa. Ekufuneni ukuba kubekho ubulungisa entlalweni, inguqu kumhlaba ibe nenjongo yokulungisa okungaphezu kocalulo lobuhlanga nje kuphela: ibe yebonelela amahlwempu ize ikhuthaze ukulingana kwabantu ngokwesini ize, ngokuguqula iindlela zemveliso notyalo-mali, iqalise ukuguqula ubumbaxa kulimo ngokuphelisa umsantsa phakathi kwemimandla yorhwebo neyentlanganisela yelizwe.²⁶
47. Ukwabiwa ngokutsha komhlaba kungundoqo kwiicebo loMzantsi-Afrika lokulwa ubuhlwempu. Oku kuyinxalenye yelinge lethu elizweni lonke lokulungisa intswela-bulungisa ekwimbali yokohluthwa umhlaba, okuqhubekayo kusiba nento yokwenza nokudalwa kobutyebi namhlanje eMzantsi-Afrika.
48. Ingxoxo-mpikiswano ekhoyo ngoku emalunga nesiqendu 25 soMgaqo-siseko ingombandela womhlaba nokwabiwa ngokutsha komhlaba ngendlela enobulungisa. Oku kuyimfuneko ukuze kulungiswe iintswela-bulungisa zasembalini neentsalela ezishiywe kukohluthwa umhlaba okwaqala ngo-1652 ngobukolonyali kwaza kwaqwelwa kukwahlulwa-hlulwa kweentlanga. Ukungabikho kobulungisa kumbandela womhlaba neziphumo zazo ezibi kubek' esichengeni uzinzo lwexesha elizayo kupolitiko yaye kufuna ukulungiswa.
49. UPhononongo-Mhlaba luka-2017 lubike ukuba kumhlaba wolimo ongama-76%, ama-72% aloo mhlaba ungowabemi baseMzantsi-Afrika abamhlophe, umhlaba oli-15% ungowabantu bebala, umhlaba osisi-5% ube ngowabantu abangamaIndiya, umhlaba osisi-4% ube ngowabantu abantsundu, uze umhlaba osisi-3% ube ngowabanye. Abantu ababhinqileyo banomhlaba wobufama oli-13% kuphela. Kunamhlanje nje, ubunini bomhlaba eMzantsi-Afrika butyekele kwiintlanga ezithile nakumadoda.
50. Ucelomngeni lokwenza inguqu kumhlaba lukukuba isantya sibe sesicotha gqitha. Ngo-1994 urhulumente wayezibekele usukelo lokuba kuthi kubetha u-2014 abe efuduse umhlaba wemveliso ongama-30%. Akuzange kuphumelele oko. Izinto eziphambili ezibangele ukungaphumeleli kube kukusetyenziswa komgaqo othi "ixabiso makube lelemariki" nothi "makubekho ovumayo ukuthenga novumayo ukuthengisa" ngaphezu komgaqo othi "ubulungisa" ekunikweni imbuyekazo kwabanini-mhlaba.

²⁶ **Ukwabiwa ngokutsha komhlaba eMzantsi-Afrika**, ingxelo egunyaziweyo yeGqiza Eliphezulu ngokuphononongwa kwemithetho ephambili yepalamente nokukhawuleziswa kwenguqu esisiseko, ilinge lePalamente yoMzantsi-Afrika, Kepe & Hall, Septemba 2016

51. Ukuza kuthi ga namhlanje, ziihektare eziyi-8.4 yezigidi zomhlaba eziye zafunyanwa ngenjongo yokwenza inguqu kumhlaba; iihektare eziyi-4.9 yezigidi zifunyenwe ngenkqubo yokwabiwa ngokutsha komhlaba nobunini; iihektare eziyi-3.5 yezigidi ngenkqubo yembuyekazo-mhlaba. Oku kulingana ne-10% lomhlaba uwonke ongowolimo.
52. Isindululo sePalamente esingoKuthathwa koMhlaba Ngaphandle kweMbuyekazo kuye kwafunisa ukuba iKomiti yePalamente Yokutshintshwa koMgaqo-siseko iphande, phakathi kwezinye izinto, iphande imfuneko yokwenza utshintsho kwisiqendu 25 soMgaqo-siseko ukuze urhulumente akwazi ukuthatha umhlaba ngaphandle kwembuyekazo.
53. Imigudu yokwaba umhlaba ngokutsha ngendlela enobulungisa iye yanyuselwa kwinqanaba eliphezulu likarhulumente, kwabakho ikomiti yabaphathiswa engenguqu kumhlaba — esihlalo wayo unguSekela-Mongameli — esekwe ukuze ilungelelanise ize isebenzise amanyathelo okukhawulezisa ukwabiwa ngokutsha komhlaba. Ngaphezu koko, kuye kwamiselwa isigqeba sabantu abali-10 sokucebisa uMongameli, esimela onke amacandelo, ukuze size namacebiso eendlela amakazisebenzise uRhulumente ukuze inkqubo yenguqu kumhlaba ibe yenobulungisa elungisa iintswela-bulungisa zexesha elidlulileyo, yandise imveliso yolimo, ikhuthaze ukuchuma koqoqosho ize yenze ukutya kube kokukhuselekileyo.

Ubuhlwempu, ukungaphangeli nokungalingani

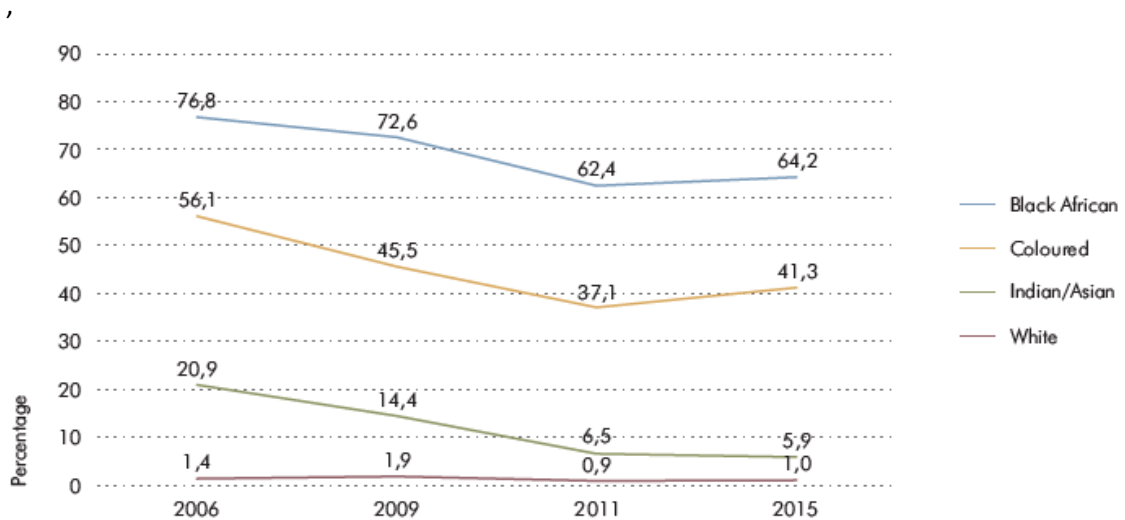
54. Ngoxa kuqhutyekwa kuphikiswana ngokuthi sesiphi esona sixhobo silungileyo sokufumanisa ukuba bungakanani ubuhlwempu, kuyavunyelwana kwelokuba ubuhlwempu nokungaphangeli ziqhubeka zingamawele alucelomngeni abek' esichengeni ukuzinza kwentlalo eMzantsi-Afrika. Kukho abathi uMzantsi-Afrika wentando yesininzi ngowenze kwaye ubumele wenze okungaphezu koku ekulweni nezi zinto zilucelomngeni. Nangona loo macebiso echanile, inyaniso ikukuba ubuhlwempu eziphila kubo izigidi zabantu baseMzantsi-Afrika namhlanje busisiphumo-ngqo sembali yethu ende yobukoloniyali nokwahlulwa-hlulwa kweentlanga.
55. Ngoxa uMzantsi-Afrika wasemva kokwahlulwa-hlulwa kweentlanga uye waxhamla iminyaka eliqela elandelelanayo yokuchuma koqoqosho, nangona urhulumente eye wangenelela ngeendlela ngeendlela ngokwasentlalweni, isabatha esibubuhlwempu sisenenkani. Okwenza le ngxaki ibe mandundu nangakumbi ngumsantsa oya uba mkhulu phakathi *kwabanezinto nabangenazinto*, okwenza uMzantsi-Afrika ube lelinye lawona mazwe abantu bawo bangalinganiyo ehlabathini. Oku kuchuma ngokoqoqosho kuye kwenza ukuba abazizityebi babe zizityebi kakhulu, abangamahlwempu babe ngamahlwempu kakhulu, buhlwempu obo obuye baviwa ngokungalinganiyo ngabantu abantsundu.
56. URhulumente uzinkqamangele ekupheliseni ubuhlwempu, kwaye umgaqo-nkqubo werhafu sisixhobo esibalulekileyo esibonisa oku kuzinkqamangela. Indlela yokwabelana

ngokulinganayo esetyenziswa ukwenza isigqibo ngemihlaba efuduselwa koorhulumente bamaphondo nabasekuhlaleni ibonelela ubuhlwempu njengenyathelo lokwaba ngokutsha. 'Umvuzo wasentlalweni' uye wasetyenziswa njengendlela yokwaba ngokutsha yolwabiwo-mali lukarhulumente ejoliswe ngabom ekuphuculeni ubomi bamahlwempu nasekunciphiseni indleko yokuphila. Oku kuye kwaphunyezwa, phakathi kwezinye izinto, ngokunonophelwa kwempilo okusimahla; ngokuba nezikolo ezingahlawulisi mali yesikolo; ngeenkamnkam zokwaluphala nezokondla abantwana; ngokubonelelwa ngezindlu; nangeenkonziso ezisisiseko zasimahla (ezamanzi, umbane nogutyulo) kwiintsapho ezihlwempuzekileyo. Nangona le migaqo-nkqubo neenzame ziye zabangela ukuncedakala kanobom ekunciphiseni ubuhlwempu ukususela ngo-1994, ilizwe liyaqhubeka lijamelana nocekomngeni lobuhlwempu obukhulu, ukungalingani okukhulu nokungaphangeli okukhulu.

57. Ngoxa kusekho ibathwana labantu abantsundu abaye baxhamla kwiziqhamo zentando yesininzi, ubunini bobutyebi ngokohlanga busabonisa uluntu ekusafuneka luzikhulule kumakhamandela okwahlulwa-hlulwa kweentlanga kwimeko yasentlalweni neyoqoqosho. Enyanisweni, ukwahlulwa-hlulwa kweentlanga kushiye uMzantsi-Afrika wentando yesininzi nelifa elingumnqa apho ukuba luhlanga oluthile kuhambisana nokuba kudidi oluthile.
58. Ukuqondwa ngokusisiseko kobuhlwempu njengento eyakhiwe ngumntu, kwaye ke ngoko njengento enokupheliswa, kususiseko sesi siCwangciso seZwelonke Sokuthabath' iNyathelo sokulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho. Esi siCwangciso simi kwelokuba ukuswela ngenxa yohlanga olulo nokubukulwa koninzi lwabantu abantsundu kususizathu esiphambili sokuba lube uninzi lwabemi elizweni lethu lusengamahlwempu.
59. Ubuhlwempu budlala indawo ebalulekileyo ekuqhutyelweni phambili kwentiyo yobuhlanga. Ngoko ke, ukwabiwa kobuncwane boqoqosho ngendlela enobulungisa kungundoqo wenguqu efuneka kunene kubudlelane beentlanga nokuzinza kwentlalo eMzantsi-Afrika.
60. Ubuhlwempu bukwaxibelelene nothabatho-nxaxheba. Kunjengokuba uMniki-ngxelo Okhethekileyo weZizwe Ezimanyeneyo kubuhlwempu Obugqithiseleyo namaLungelo oluntu esitsho, esithi ubuhlwempu buyinxalabo engxamisekileyo yamalungelo oluntu. Kwabo baphila kubuhlwempu obugqithiseleyo, amalungelo oluntu amaninzi akafikeleleki. Phakathi kwezinye izinto ezininzi abangenazo, abantu abangamahlwempu badla ngokuswela imfundo, iinkonzo zempilo okanye amanzi okusela akhuselekileyo nogutyulo olusisiseko. Badla ngokukhutshelwa ngaphandle ekuthabatheni inxaxheba okukuko kwinkqubo yopolitiko nasekufuneni ubulungisa ngokunyhashwa kwamalungelo abo oluntu. Ubuhlwempu obugqithiseleyo bunokuba *ngunobangela* wokunyhashwa kwamalungelo athile oluntu, umzekelo, ngenxa yokuba amahlwempu anyanzelwa ukuba asebenze kwimekobume engakhuselekanga nengenampilo. Kwangaxesha-nye, ubuhlwempu bunako nokuba *sisiphumo* sokunyhashwa kwamalungelo oluntu, umzekelo, xa abantwana bengakwazi ukuphuncula kubuhlwempu ngenxa yokuba uRhulumente engenakwenza ukuba bafumane imfundo ngokwaneleyo. Ngoko ke ukupheliswa kobuhlwempu obugqithiseleyo akumele kujongwe ngokungathi sisenzo sokwenza isisa, koko makujongwe njengengxaki yamalungelo

oluntu. Ukuzingisa kwabo emazweni angakwazi ukubuphelisa kukukunyhashwa okucacileyo kwamalungelo oluntu asisiseko.²⁷

61. Abemi baseMzantsi-Afrika abantsundu basoloko bengabona bahlwempuzekileyo. Ngo-2015, ama-47% eentsapho ezinentloko engumntu ontsundu waseMzantsi-Afrika ayengamahlwempu. Eli nani laliphezulu kakhulu xa lithelekiswa nama-23% eentsapho ezinentloko engumntu webala, kube ngaphezulu nje kancinane kwi-1% yeentsapho ezinentloko engumntu waseMzantsi-Afrika ongowaseAsia, kuze kube ngaphantsi kwe-1% yeentsapho ezinentloko engumntu omhlophe waseMzantsi-Afrika.²⁸ Abantu abantsundu baseMzantsi-Afrika bangamahlwempu kangangokuba bangaphezu kwethoba kwishumi ngalinye labantu abaphila ngaphantsi komda ophezulu wobuhlwempu. **Isicangca 1** ngezantsi sibonisa ukubalwa kwabantu abangamahlwempu kwiqela ngalinye labemi ngo-2006, ngo-2009, ngo-2011 nango-2015:



TRANSLATION OF THE ABOVE CHART

Percentage = inani ekhulwini

Black African = abantsundu

Coloured = abebala

Indian = amaIndiya/ama-Asia

White = abamhlophe

62. **Isicangca 2** ngezantsi sibonisa ukubalwa kwabantu abangamahlwempu nesikhewu sobuhlwempu kwiqela ngalinye labemi ngo-2006, ngo-2009, ngo-2011 nango-2015.

²⁷ <https://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyindex.aspx>

²⁸ Overcoming Poverty and Inequality in South Africa, An Assessment of Drivers, Constraints and Opportunities, (undertaken by The World Bank, the National Planning Commission Secretariat at the Department of Planning, Monitoring and Evaluation, and Statistics South Africa) March 2018

	Headcount (P_0)				Poverty gap (P_1)				Severity (P_2)			
	2006	2009	2011	2015	2006	2009	2011	2015	2006	2009	2011	2015
Total	66,6	62,1	53,2	55,5	35,6	33,5	25,5	27,7	22,5	21,3	15,0	17,0
Black African	76,8	72,6	62,4	64,2	41,8	39,8	30,3	32,5	26,6	25,5	18,1	20,1
Coloured	56,1	45,5	37,1	41,3	24,9	20,4	14,3	16,9	14,3	11,3	7,3	9,1
Indian/Asian	20,9	14,4	6,5	5,9	6,9	4,0	1,9	1,5	3,2	1,4	0,8	0,5
White	1,4	1,9	0,9	1,0	0,4	0,8	0,4	0,4	0,2	0,5	0,2	0,2

TRANSLATION OF THE ABOVE CHART

Headcount = ubalo

Povrty gap = umahluko kubuhlwempu

Severity = bubi kangakanani

Total = ewonke

Black African = abantsundu

Colured = abebala

Indian/Asian = amaIndiya/ama-Asia

White = abamhlophe

63. Inani ekhulwini labantu abaye baxhamla kwizibonelelo zenkamnkam liye lasoloko lisanda ukusuka ku-12,8% ngo-2003 ukuya ku-30,8% ngo-2017. Ngaxesha-nye, inani ekhulwini leentsapho ezifumene ubuncinane inkamnkam enye liye landa ukusuka ku-30,8% ukuya ku-43,8% ngo-2017. Bangaphezu kwesinye kwisithathu abantu abantsundu baseMzantsi-Afrika (33,8%) abaye bafumana inkamnkam, xa kuthelekiswa ne-29,3% yabantu bebala, ne-14,5% yabantu abangamaIndiya okanye baseAsia. Xa kuthelekiswa, bayi-6,1% kuphela abamhlophe abaye bafumana iinkamnkam.²⁹
64. Ingxelo epheleleyo yakutshanje³⁰ equlunqwe yiBhanki yeHlabathi isebenzisana neCandelo labaSebenzi leKomishoni Yokucwangcisa yeZwelonke kwiSebe Lokucwangcisa, Lokubek' eSweni Nokuhlola, necandelo leeNkcukacha-manani laseMzantsi-Afrika ibonisa ukuba, xa kujongwa ngokubanzi, ubuhlwempu bubhetele namhlanje xa kuthelekiswa nango-1994. Ukukhula-khula koqoqosho ngokuthe ngcembe emva kokuphela kokwahlulwa-hlulwa kweentlanga ngo-1994 ukuza kutsho kwisithuba sika-2011 kuye kwaxhasa ukuphungulwa kobuhlwempu eMzantsi-Afrika, nangona amathemba okukhula koqoqosho ebesehla kwiminyaka yakutshanje. Kungokunje uqoqosho aluvelisi misebenzi yaneleyo, kwaye inqanaba lokungaphangeli beliyi-27.7% kwikota yesithathu ka-2017. Ulutsha nabasebenzi abangenazakhono ngabona bayivayo ingxaki njengoko abaqeshi befuna abasebenzi abanezakhono, lube ulutsha olungaphangeliyo luyi-38,6%. Ngenxa yoku, ubuhlwempu buye banda phakathi kuka-2011 no-2015. La mava asisikhumbuzo semeko yokwenene yokuba ucelomngeni lobomi basentlalweni noqoqosho elizweni lethu lunzulu, lumiliselekile kwaye lolwexesha elide.

²⁹ GHS 2017, Statistics SA

³⁰ Overcoming Poverty and Inequality in South Africa, An Assessment of Drivers, Constraints and Opportunities, (undertaken by The World Bank, the National Planning Commission Secretariat at the Department of Planning, Monitoring and Evaluation, and Statistics South Africa) March 2018

Ukuguqulwa kwamaziko karhulumente nazimeleyo angundoqo

65. Phantsi kobukoloni ali nokwahlulwa-hlulwa kweentlanga, amaziko karhulumente nazimeleyo ayesetyenziswa njengezixhobo zocalulo lobuhlanga, ekwasetyenziselwa ukucinezela abantsundu. Iintsalela ezishiyekileyo zokugcinelwa kwabathile umsebenzi zisavakala nanamhlanje kuMzantsi-Afrika wentando yesininzi. Nangona kwenziwe inkqubela eburhulumenteni, kwiindawo ezininzi inguqu ayikanelisi. Icandelo lamashishini azimeleyo alikhawulezisanga ngokwaneleyo ngendlela ebelimele likhawulezise ngayo ekwenzeni inguqu, okuquka ukubandakanywa kwabo bonke abantu kwiindawo zempangelo.

Imfundo

66. Ngokwembali, imfundo yayisetyenziswa njengesixhobo sengcinezelo eMzantsi-Afrika. Ukubabandeza uninzi lwabemi imfundo yexabiso nengenayo intiyo yobuhlanga kwakulelinye lamacebo obukoloni ali nokwahlulwa-hlulwa kweentlanga okuqinisekisa ukuba ababi nankqubela-phambili abantu abantsundu nokubabandeza ulwazi. Kukunikwa kwabantsundu abasisininzi imfundo ephantsi neyentiyo yobuhlanga eyayibizwa ngokuba yi-“Bantu Education” okwakhokelela kwimigushuzo yabafundi eyaba sembalini nokuxhathisa ngowe-1976 neminye imigushuzo. Iintsalela ezishiywe yile mfundo iphantsi ziaqhubeka ziliphatha kabuhlungu ilizwe lethu nanamhlanje. Intshukumo ethi #RhodesMustFall eyaqala kwiYunivesithi yaseKapa ngo-2015 yayiqale yabhekiswa kumfanekiso oqingqiweyo owawusisikhumbuzo sikaCecil John Rhodes, kodwa elo phulo laba sisiqalo seyona ntshukumo inkulu yemigushuzo yabafundi. Kulo lonke ilizwe, abafundi bamemela ukuba maziyeke iiyunivesithi “ukuba phantsi kobukoloni ali” bekwamemelela ukuba kubekho imfundo yasimahla eziyunivesithi, phakathi kwezinye izinto.
67. Zikho izinto ezixabe endleleni yelungelo lemfundo. Uphando luye lwasoloko lubonisa ukuba esona sithintelo sikhulu seziphumo zemfundo eMzantsi-Afrika bubume bemeko yasentlalweni neyoqoqosho. Xa kujongwa imbali yoMzantsi-Afrika, kukho ukudibana kobuhlwempu, uhlanga nokuhleleleka kwimbali edlulileyo. Nangona imfundo nemigaqo-nkqubo yoqoqosho iyilelwe ukuba ibe ngecala lamahlwempu, iziphumo ezibi zeemeko ezingunobangela zasekhaya azinakutshayelwa ziphele nya. Ngoko ke isantya sophuhliso lwasentlalweni noloqoqosho elizweni sisisithintelo sexesha elide ekufezekisweni ngokupheleleyo kwelungelo lemfundo.
68. UMzantsi-Afrika usajamelene nemicelomngeni emikhulu yentiyo yobuhlanga nokungalingani ezikolweni nakumaziko emfundo ephakamileyo. Nangona kwezinye iinkqubela-phambili eziliqela, kwaqulunqwa nemithetho yepalamente eqhubela phambili ukukhawulezisa ukumanywa kweentlanga, isizwe sethu sisaman’ ukufumana iziganeko ezibonisa ukuba idimoni yentiyo yobuhlanga ezikolweni nakumaziko emfundo ephakamileyo iyala ukuphuma, nokuthi uninzi lwamaziko ethu okufunda ayaqhubeka ezama-zamana nokumanywa kweentlanga.
69. ISahluko 9 sesiCwangciso seZwelonke Sokuthath’ iNyathelo sinombono welizwe apho bonke abantwana banokuyifumana imfundo yexabiso eliphezulu kwaye baxhamle kuyo. Kusekho

imicelimngeni ejamelene nemfundo. Izinto zasemva kokuba kuphume isikolo, ezinjengobuhlwempu neemeko zasentlalweni nezoqoqosho, zinendima eziyidlalayo. Iimbopheleleko zasekhaseni, ukunyanzeleka ukuba usebenze usekhaya, nokukhulelwa, zingoonobangela kwabo bangayifumaniyo imfundo. Ngaphezu koko, abafundi abaninzi kwizikolo zaseMzantsi-Afrika bajamelene nomqobo wolwimi kwigumbi lokufundela.

70. Ezinye izinto ezingoonobangela ziquka inyaniso yokuba abantwana abaninzi baseMzantsi-Afrika abahlali mzini mnye nabazali babo. Ubuhlwempu nokungafundi kwabantu abakhulu kudla ngokuthintela abazali abakhoyo bangabandakanyeki kwimfundo yabantwana babo. Ulutsha oluninzi luphoswa lithuba lokufumana imfundo ephakamileyo kuba abanayo imali yayo.
71. UMzantsi-Afrika unezikolo zikarhulumente nezizimeleyo. Ekupheleni kuka-2015 kwakukho izikolo zikarhulumente ezingama-23 905 nezikolo ezizimeleyo ezili-1 786.³¹ Izikolo zikarhulumente ziquka ezo zixhaswa ngemali ngurhulumente nezinye ezixhaswa ngokuyinxenye liqumrhu elilawula isikolo. Kudla ngokubakho ukungalingani kwenani leetitshala nelabafundi, izakhiwo, ubuncwane nokufikeleleka ngexabiso phakathi kweentlobo ezingafaniyo zezikolo.
72. Olunye lwemicelomngeni emikhulu kukuba izikolo namaziko emfundo ephakamileyo awamanyaniswa ngokupheleleyo. Kufuneka silungise iintsalela ezishiywe kukwahlukaniswa kwemfundo, kulungiswe nezimo zengqondo neentiyo ezibangela ukuzingisa kwentiyo yobuhlanga. Kukwafuneka silungise ukugqwetha kwezinto nokuthath' icala kwindlela eye yabhalwa ngayo imbali kuze kukhuthazwe ukunyamezelana nokuhlanelwa kokungafani kweentlanga, kwenkcubeko yazo nonqulo lwazo.
73. Kunyanzelekile ukuba kuhlenganiswe kwizifundo zesikolo uqeqesho nemfundo engokuchasa intiyo yobuhlanga, ngakumbi imigaqo nolawulo lwesininzi, kuze kuphuhlise izifundo zesikolo eziyichaza ngokunyaniseka, ngokukuko nangokwenyaniso imvelaphi yethu ebuhlungu, kukhuthazwe nokumanywa okukhudwana kwezikolo. Kufuneka siqinisekise ukuba izikolo aziyekiswa ukwahlukana nje kuphela, koko zikwamanyene. Kufuneka izikolo zibonise indlela esakheke ngayo isizwe, ukungafani kwaso, nokutyeba kwelifa lethu lenkcubeko. Kunamhlanje nje urhulumente uthabathe amanyathelo aliqela okuphucula amalungelo oluntu nokuqondwa koMgaqo-siseko ezikolweni. Amanyathelo anjengoKhuphiswano lweZikolo eZwenilonke Lokulinganisa Amatyalu Asenkundleni, ukhuphiswano iAlbert Luthuli lokubaliswa kwembali ngomlomo, nokumiselwa kweMbali njengesifundo esisisinyanzelo ezikolweni, zizinto ezibaluleke kunene ekwenzeni abantu bazi ngamalungelo oluntu. Ngaphezu koko, izikolo ezingafundisi zilwimi zomthonyama, ngoku ziyanyanzelwa ukuba zenze njalo.

Ukuveliswa kolwazi

74. Ukucinezelwa nokucalulwa kwabantu abantsundu eMzantsi-Afrika kwakuthethelelwa ngeengcaciso ezingusinga-nzululwazi, ezaziphehlwa yimizi yopapasho-zincwadi yabamhlophe ngenjongo yokugqwetha inyaniso ngeAfrika nokubenza abamhlophe

³¹ <https://www.education.gov.za/EducationinSA/tabid/327/Default.aspx>

babonakale besisizwe esikrelekrele kunezinye. Ngaloo ndlela abantsundu babeshiywa ngaphandle ekuvelisweni kolwazi, yaye kwakubhalwa ngabo kuphela ngokwendlela ababebonwa ngayo ngababhali abamhlophe. Oku kushiya ngaphandle kwathi ke kwasetyenziswa kupolitiko ngenjongo yokuba kuqhubeka ukujongwa kweentlanga ezithile ngendlela ethile. Oku kujongwa kweentlanga ezithile ngendlela ethile kuyaqhubeka ngeendlela ezininzi ezingumshoshaphantsi kuMzantsi-Afrika wentando yesininzi.

Ukukhulula ingqondo kubukoloniya

75. Ngenxa yokunyanzeliswa kwayo ngendlela echuliweyo ixesha elingaphezu kwamakhulu amathathu eminyaka, ingcinga yokujonga uhlanga alulo umntu iye yaba yinto yokwenene kubantu ngabanye naseluntwini. Ukuzingisa kokungalingani kobutyebi nokushiya-shiyana ekufikeleleni kubuncwane ziintlanga ngeentlanga, kwakunye nempembelelo yohlanga kwiimeko zasentlalweni, kusebenza ukuqhubekisela phambili iimbono zobuhlanga nezimo zengqondo. Nangona zingathiwa pahaha elubala, iingcinga neenkolelo zokuba uhlanga olumhlophe lungaphezu kwezinye zisekho ngokulinganayo kwabamhlophe abathile nabantsundu abathile baseMzantsi-Afrika. Ukuba phantsi kohlanga oluntsundu kuye kwendela ezingqondweni zabo ababhengezwa beluhlanga oluphantsi. Inkqubo yeKomishoni yeNyaniso noXolelwaniso isifundise ukuba ukukuvuma ngenene okwenzekileyo kwixesha elidlulileyo akuyonto enye nokuthi phithi kuko, koko kokokuqinisekisa ukuba okwenzeke kwixesha elidlulileyo akubi sisiporho esibuyayo siporhele ingomso.
76. UMzantsi-Afrika ululuntu oluye lwaviswa ubuhlungu noluqhubeka luphila nentlungu ebangelwe bubukoloniya nakukwahlulwa-hlulwa kweentlanga. Kungokukhumbula oku engqondweni esithi esi siCwangciso sibavume abo ababengamaxhoba nabaqhubeka bengamaxhoba entiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho. Sikholelwa kwelokuba ngokuyivuma inkohlakalo yexesha elidlulileyo, siza kuyondelelanisa imigudu yokusindisa ingomso kwimithwalo yobuhlanga yexesha elidlulileyo.
77. Kumele kuvunywe ukuba ukukhululeka ngokwenene kwintyo yobuhlanga kuqala engqondweni. Ukudiliza iinkolelo zobuhlanga nokubhenca ubumpunge bazo kufanele kube yinxalenye yamacebo angabom okulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho — ngokoMgaqo-siseko.

Ubunye boluntu

78. Ilifa loMzantsi-Afrika localulo lobuhlanga liyaqhubeka liphembelela ubudlelane beentlanga nokumanywa kwazo kuluntu lwethu namhlanje. Ubunye boluntu sisichasi sokubukulwa nokwahlukaniswa, kwaye bungumoya wolwamkelo ofanele ukhokele imigudu yelizwe enjongo yayo ikukwakha uluntu olutsha. Okungundoqo kule nkqubo kukukhuthazwa kwemvakalelo yokuba singaba ndawonye kwaye siyakubhiyozela ukungafani kwethu sonke

thina esiphila eMzantsi-Afrika. Oku kuquka ukomelezwa kwelifa eliphungulekileyo labantu baseAfrika. Ukwakha uMzantsi-Afrika omanyeneyo, ongacaluli ngesini nowentando yesininzi kusoloko kuyinto ephambili engxamisekileyo elizweni lonke.

Ingxoxo kawonkewonke

79. Ingxoxo kawonkewonke eMzantsi-Afrika ikakhulu iqhutywa ngamajelo eendaba amakhulu adlamkileyo nantsonkothileyo. Amajelo eendaba asisixhobo esibalulekileyo sokudlulisela iingcamango nemiyalezo ngentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho. Amajelo eendaba anokusetyenziswa kokubini ngeendlela ezintle nangeendlela ezimbi ukukhuthaza ukuchaswa kwentiyo yobuhlanga nokulwa ukunganyamezelani kobuhlanga endaweni yokuba asetyenziselwe ukukhwezela iimbono zentiyo yobuhlanga. Ngokwembali ubukoloniwali nokwahlulwa-hlulwa kweentlanga kwawasebenzisa amajelo eendaba athile ukwenzela ukuba intiyo yobuhlanga yendele. KuMzantsi-Afrika wangoku, ingxoxo yelizwe lonke ngendima yamajelo eendaba nokusasazwa kombandela ongentiyo yobuhlanga nentiyo yabantu bamanye amazwe kufuneka ibe soloko igcinwe iphila ukuze isizwe sethu sihlale siyiqonda into yokuba siyisingatha njani imibandela enjalo, yaye kufuneka kunikelwe ingqalelo ekhethekileyo kwindima yamakhasi onxibelelwano.

Intiyo yabantu bamanye amazwe

80. Intiyo yabantu bamanye amazwe luloyiko olungabhadlanga lwabantu basemzini, abantu bamanye amazwe, kukungabathembi, okanye ukubazonda, okanye ukuzonda nantoni na ethathwa ngokuthi yeyelinye ilizwe okanye yahlukile, yaye olu loyiko nale nzondo zisoloko zingezizathu ezingabhadlanga nokucinga kwabantu ngendlela ethile. Intiyo yabantu bamanye amazwe inokuzibonakalisa ngeendlela eziliqela elizweni. Umzekelo, inokuzibonakalisa ngokuxhatshazwa ngenxa yokuba ngowelizwe elithile okanye ngenxa yembonakalo yomntu, ukubethwa ngenkohlakalo, ukubulawa, ukutshayelwa kwabantu abasisizwe esithile baphele kummandla othile, nokugxothwa ngobuninzi elizweni.
81. Kwixesha elidlulileyo nakutshanje, uMzantsi-Afrika uye waba neentlobo zentiyo yabantu bamanye amazwe ezinabileyo nezinogonyamelo okuthe kwabangela ukufa nokwenzakala kwabantu kwakunye nokuphangwa kwempahla nokutshatyalaliswa kwayo. Intiyo yabantu bamanye amazwe ilucelomngeni olubi ekukhuselweni kwamalungelo oluntu. Kubalulekile ukuba oorhulumente, uluntu, abantu abangabafudukeli kweli nabangabalapha neenkokeli zoluntu, kuquka iinkokeli zomthonyama, ziwulwe lo mkhuba. Iindlela ezimbalwa ezinokusetyenziswa ekulweni intiyo yabantu bamanye amazwe ziquka ukuvuma ukubq zikho kwaye zigxekwe izenze zogonyamelo olubangelwa kukungabafuni abanye abantu nanini na xa zisenzeka, kuwiswe imithetho ekwenza kube lulwaphulo-mthetho ukuthiya omnye umntu, kuqiniseke ukunyanzeliswa komthetho, kuze kutshutshiswe abenzi bobubi.
82. Kunyanzelekile ukukubek' esweni nokukubika ukuhlaselwa kwabantu nokubanceda abantu abachatshazelwe lugonyamelo ukuze kudanjiswe uloyiko, kuncedwe amaxhoba, kuphuculwe nokubikwa kweziganeko. Kukwabalulekile nokukhuthaza umoya wokudityaniswa kwabantu

ngokuthetha nabantu apho intiyo yabantu bamanye amazwe ixhaphake kakhulu khona. Oorhulumente kufuneka bathumele imiyalezo ecacileyo ethi ukugonyamelwa kwabantu bamanye amazwe nokuhlaselwa kwabo akuyi kunyamezelwa, nokuthi abo babandakanyekileyo kwezo zenzo baza kutshutshiswa.

Ucalulo olusekelwe kwisizwe asiso umntu

83. Ngokusebenzisa inkqubo ekukubahlukanisa abantu uze ubalawule, nangokwahlulwa-hlulwa kweentlanga, abantu abantsundu baqokelelwa kumaphandle nasezilokishini ezaziyimimandla eyayenzelwe ukudala imisantsa phakathi kwabantu abantsundu ngokuthi basesiphi isizwe. Ngokuhamba kwexesha, ukuzazi ukuba usesiphi isizwe kwenziwa kwaba yinto enkulu kwezinye iinxalenye zabantu baseAfrika. Nangona sekoyiswayo ukwahlulwa-hlulwa kweentlanga, uMzantsi-Afrika uya kusoloko uzilumkele iintsalela esizishiyelweyo zocalulo olusekelwe kwisizwe asiso umntu. UMgaqo-siseko wandlala isiseko sokudala uluntu ekuthi kulo ukubhiyozelwa kokungafani kweenkcubeko zethu kube negalelo ekudalweni kokumanyana kwethu singabantu baseMzantsi-Afrika.
84. Nangona kunjalo “ubuzwe” busasele — mininzi imizekelo.³² Owayesakuba nguMongameli Mbeki wabuchaza “ubuzwe” njengocelomngeni kuMzantsi-Afrika nanjengento eqhubela phambili urhwaphilizo, njengoko babusisixhobo esasisetyenziswa ngoosopolitiki ukubenzisa intando yabo abathile nokubavuzwa abanye”.³³

Ukucalulwa nokugonyamelwa kwabesini esithile

85. Ngokwembali, kuye kwabakho ukusebenzelana phakathi kocalulo lobuhlanga nolwesini. Oku kusebenzelana kwakusekelwe kwimikhwa exhasa icala lamadoda eye yangumbono oqhelekileyo kuzo zonke iinkcubeko elizweni lethu. Le mikhwa yenkcubeko ikhuthaze ingcamango yokuphakanyiswa kwamadoda ebisenzelwa ngabom ukuncitshiswa kwabantu ababhinquileyo. Likwayinyaniso kambe nelokuba ukudeleleka kwabafazi eluntwini kukwabangelwe nabubukoloniwali nokwahlulwa-hlulwa kweentlanga kwexesha elidlulileyo. Phantsi kokwahlulwa-hlulwa kweentlanga, uninzi lwabafazi eMzantsi-Afrika luye lwacinezelwa ngeendlela ezintathu: ngesini, ngomgangatho abakuwo entlalweni nangohlanga.
86. Kokubini abafazi nabantwana basengabantu abazisisulu eluntwini. Amalungelo abo adla ngokunyhashwa, phakathi kwezinye izinto, ngokugonyamelwa ekhayeni, ukuthengiswa, imifanekiso engamanyala yabantwana, nokuxhatshazwa kumsebenzi wengqesho. Konke oku kuyichaphazela kakubi inkululeko yabafazi nentlalo-ntle yabantwana. Liyinyaniso ngoMzantsi-Afrika elokuba intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye

³² Umzekelo, indoda engabizwanga ngagama yacatshulwa ithetha ngemigushuzo eyayiseTshwane emva kokuba iANC igqibe kwelokuba uThoko Didiza abe ngumgqatswa wayo wokuba ngusodolophu xa kwakuza kubakho unyulo loomasipala: “I-ANC ayinakuzisa umZulu waKwaZulu-Natal ukuba azolawula amaPedi, amaTsonga namaVenda. Ukuba nithi [uDidiza] ungowasePitoli, sixeleleni ukuba ungowandawoni ePitoli.” (<https://www.thesouthafrican.com/racism-and-tribalism-still-engraved-in-most-south-africans/>)

³³ Kwintetho yakhe ephambili ekuvulweni kweCollege of Human Science (CHS) yaseUNISA, Januwari 2014

amazwe nokunye ukunganyamezelani okuyebele apho kuzibonakalisa ngeendlela ezingafaniyo nangeendlela ezibuhlungu ngakumbi kubafazi nakubantwana. Ezi ndlela ziquka ukuwohloka kwiimeko abaphila kuzo, ubuhlwempu, ugonyamelo nezinye iintlobo ezininzi zocalulo.

87. Phantsi kokwahlulwa-hlulwa kweentlanga, abafazi abantsundu eMzantsi-Afrika babecinezelwa ngeendlela ezintathu, oko kukuthi, ngesini, ngomgangatho abakuwo entlalweni, nangohlanga. Ubunjani bokwahlulwa-hlulwa kweentlanga babuchaphazela kanobom ubomi babafazi abantsundu. Ukucinezelwa kwabantu besini esithile kudla ngokwenziwa kwizithethe zasentlalweni zenkcubeko nakwizimo zengqondo, ezithi zonke zixhaswe kwaye ziqhutyelwe phambili yinkolelo ebathobayo abafazi.
88. Kubafazi abaninzi abantsundu abangamahlwempu oku kubonelelwa kwamadoda kwakuthetha ukubekelwa ecaleni: kuqoqosho, kupolitiko, nakwimisebenzi yengqesho. Abafazi abaninzi abantsundu babetyhalelwa kwimisebenzi engeyoyabugcisa, ehlawula kancinane njengabasebenzi basemakhitshini okanye basezifektri.
89. IKomiti yeConvention on the Elimination of All Forms of Discrimination Against Women (CEDAW), kumagqabaza ayo okuqukumbela, yaphawula ukuba iintsalela ezishiywe kukwahlulwa-hlulwa kweentlanga malunga nabafazi ziquka *“ukucalulwa okuthe tshitshilili nokungabi nankqubela-phambili, kwaye kubonakala kwizinto ezinjengenani eliphezulu labafazi abangaphangeliyo, ukungakwazi ukufunda, ubuhlwempu, nasekugonyamelweni kwabafazi”*. Ngoko ke kubalulekile ukuba iintswelo zabafazi zibekwe phambili kokubini elizweni lonke nasekuhlaleni nasekhayeni, ukuze kubekho ukulingana.
90. Ngo-2015, kwaphunyezwa isigqibo yiNgqungquthela-Jikelele yeZizwe Ezimanyeneyo sokuba kwamkelwe uCwangciso loPhuhliso Oluqhubekayo luka-2030.³⁴ IiNjongo zoPhuhliso Oluqhubekayo ezili-17 ne-169 lezinto emazenziwe zibonisa ukuzimisela ukwenz’ isenzo kwiminyaka eli-15 ezayo kwizinto ezibalulekileyo kuluntu nakwisijikelezi-langa. Ngokuthe ngqo, usukelo 5 ‘kukuba kulinganwe ngokwesini nokuxhobisa bonke abafazi namantombazana’, ngezi zisukelo zilandelayo zibalulekileyo: (a) ukuphelisa zonke iintlobo zokucalulwa kwabafazi nabantwana kuzo zonke iindawo; (b) ukuphelisa zonke iintlobo zokugonyamelwa kwabafazi namantombazana esidlangalaleni nasesithe, kuquka nokuthengiswa kwabo nokuxhatshazwa ngokwesondo nangezinye iindlela; (c) ukuphelisa yonke imikhwa eyingozi enjengokwendiswa kwabantwana, ngaphambi kwexesha nangokunyanzelwa, nokutyhuthulwa amalungu angasese amantombazana.³⁵
91. Ukuzinqamangela koMzantsi-Afrika ukuphelisa intiyo yobuhlanga, ingcinezelo nokuxhatshazwa eluntwini lwethu akunakoyiswa kukulungisa nombandela wokulingana kwamadoda nabafazi. Amava abanye abantu bezinye iindawo abonise ukuba ukulingana kwamadoda nabafazi akusosiqhamo somzabalazo wokuba makubekho intando yesininzi okanye ukukhululeka kwelizwe. Yinto ekufuneka ukuba ilungiswe iyodwa. Ukuze kufunyanwe ukulingana okukuko, imigaqo-nkqubo kufuneka isekelwe ekuqondeni

³⁴ INgqungquthela-Jikelele yeZizwe Ezimanyeneyo, Ukuququla ihlabathi lethu: uCwangciso loPhuhliso Oluqhubekayo luka-2030, 21 Oktobha 2015, A/RES/70/1.

³⁵ National Strategic Plan on Gender-based Violence Shadow Framework (Stop Gender Violence Campaign), 2017, page 22

ngokwenene ukwenziwa kwezinto ngamadoda esithe sakuzuz' ilifa neendlela okuzibonakalisa ngayo oku eluntwini.

92. Ukulingana kwamadoda nabafazi kuyinto enyanzeliswa nguMgaqo-siseko eMzantsi-Afrika. UMgaqo-siseko uzama ukuba kulinganwe ngamadoda nabafazi ngokwalela ucalulo lobuhlanga, lwesini, nazo zonke ezinye iintlobo zocalulo. Oku kulingana kusekelwe ngokuluqilima kuMgaqo-siseko yaye kubonakaliswe kwimithetho ngemithetho, kwimigaqo-nkqubo, kwiinkqubo nakwiindlela zokwenza. Okufunwa nguMgaqo-siseko ngokulingana kwamadoda nabafazi kucacile yaye inkqubo yokuwiswa kwemithetho yona ifanele ibe zizitena zokwakha ukuze uluntu lwethu lube lolunobulungisa ekulinganeni kwamadoda nabafazi.
93. Iyakhathaza into yokuba babe bangaphantsi kwama-50% abafazi abanolwazi ngoMgaqo-siseko. Uphando lubonisa ukuba malunga nokwazi uMgaqo-siseko, abafazi namadoda abathe baphendula bawazi ngokulinganayo. Ngoxa ebonakalise ukuba nolwazi oluphantsi amadoda angama-37% athe aphenndula, bangama-40% abafazi abathe baphendula ababonakalise ukuba nolwazi oluphantsi nabo. Kwelinye icala, angama-36% amadoda athe aphenndula abonakalise ukuba nolwazi oluphezulu loMgaqo-siseko, ngoxa bengama-32% abafazi abathe baphendula ababonakalise ukuba nolwazi lwawo oluphezulu.³⁶
94. UMzantsi-Afrika unelona nqanaba liphakamileyo lokugonyamelwa kwabafazi ehlabathini, kugonyamelwa abesini esithile ngabesini esithile, kube kusanda ukugonyamelwa ngenxa yokuthandana kwabesini esithile nabesini esithile, ekuyinto eya iqheleka ngokuqheleka kwaye ingafane ibikwe. NgoAgasti 2018, umbutho ekuthiwa yi-#TotalShutdown — umbutho wabafazi (kokubini abazibona beyile nto abazalwa beyiyo nabazibona bengeyiyo le nto abazalwa beyiyo) nabantu abangenzi ngokwesini sabo — bahambisa uxwebhu lwezikhalazo kuRhulumente besithi ukugonyamelwa kwabafazi ngamadoda, abafazi abangenzi ngokwesini sabo nabafazi abambaxa, kufike kumanqanaba angamkelekileyo yaye kubangela ukwenzakala okungathethekiyo nokuthi ukuba akukho nyathelo ngokupheleleyo elithathwa zizo zonke iinxalenye ezichaphazelekayo zoluntu kwakunye nokuzimisela kwabopolitiko, akukho nto eya kutshintsha ukuphelisa esi sibetho. Uxwebhu olu lukhankanya iqela lokuqala leemfuno ezingamashumi amabini anesine zokwenza ukuba abafazi nabantu abangenzi ngokwesini sabo balifumane ilungelo labo lokugonyamelwa. Emva kwaloo mngcelele we-#TotalShutdown nanjengesiphumo sayo, kwabizwa iNtlanganiso yooMongameli ngomhla woku-1 ukuya kowesi-2 kuNovemba 2018, ntlanganiso leyo eyathi yaphumeza iSibhengezo Nxamnye Nokugonyamelwa Kwabesini Esithile Ngabesini Esithile Nokubulalana Kweentsapho.

Ukuthintela ukucalulwa nokuthiywa kwabantu bezini ezahluka-hlukeneyo

95. Alithandabuzeki elokuba ukugonyamelwa nokucalulwa ngenxa yokuthandana nabesini esithile nangenxa yokuzibonakalisa ungumntu onjani ngokwesini, kusekho. Ucelomngeni lusekuguquleni iindlela olucinga ngazo uluntu, ukuqinisekisa ukuba abantu ababi

³⁶ The Foundation for Human Rights' Socio-Economic Justice for All" (SEJA) Baseline Survey, 2017

ngamakhoba okugonyamelwa okanye okucalulwa kubomi babo bemihla ngemihla ngenxa yesini sabantu abathandana nangenxa yokuthi bazibonakalisa bengabantu abanjani ngokwesini.

96. Uhlolo-zimvo ngabantu abathandana besini esinye nangokungenzi komntu ngokwesini asiso eMzantsi-Afrika, olwenziwe yi-Other Foundation nayi-Human Sciences Research Council lufumanise ukuba ama-55% abantu baseMzantsi-Afrika babonise ukuba bangalamkela ilungu losapho elithandana nomntu wesini esinye nalo, kodwa bangama-27% kuphela abanomhlobo okanye abanelungu losapho abalaziyo ukuba lithandana nabantu besini salo; abangama-51% bakholelwa kwelokuba abantu abathandana besini esinye kufuneka babe namalungelo afanayo nawabanye abantu, babe bona abangama-72% benombono wokuba ukuthandana nabantu besini sakho “yinto engafanelekanga”. Uhlolo-zimvo lukwafumanise ukuba phakathi kuka-2012 no-2015, kuye kwabakho ulwando oluphindwe kalishumi kwinani labantu baseMzantsi-Afrika “abavumelana ngokupheleleyo” nokuvunyelwa kwabesini esinye batshate. Abasibhozo kubantu abali-10 bathe abazange bakhe — kwaye bengasoze bayicinge nokuyicinga into yokuba — bamthuke okanye bambek’ isandla umntu ongenzi ngokwesini asiso.
97. Uhlolisiso lwakutshanje olwenziwe yi-Foundation for Human Rights (“FHR”) lubonisa ukuba abantu abasisibini kwisithathu (68%) sabo bonke abaphendulileyo bavumile okanye bavume ngokupheleleyo ukuba abantu eMzantsi-Afrika bakhululekile ukukhetha nokukubonakalisa ukuba batyekele ekuthandaneni nabesini esinjani bengenaloyiko okanye bengagwetywa ngabanye. Phantse abantu abasisithathu kwisine (74%) kwabaphendulileyo bakuphikisile okanye bakuphikisa ngamandla ukuthi ukuthandana nabesini sakho kunxamnye nokuziphatha koluntu. Kufunyaniswe kunjalo nakuma-Indiya/Asia (72%), kwabantsundu base-Afrika (73%), kwabamhlophe (77%) nakwabebala (77%) abaphendulileyo, nakwabaphendulileyo kokubini kwabangamadoda (73%) nabangabafazi (74%).³⁷

Ukukhunjulwa kwamakhoba Nokuphola Kwesizwe Noxolelwaniso

98. Ubukoloni-ali nokwahlulwa-hlulwa kweentlanga kwakuyimigaqo-nkqubo ecalulayo ebandakanya abenzi bobubi namakhoba. Le nyaniso engenakuphikiswa kwafuneka ivunyelwe ukuze isizwe sethu siphile kwaye senze inkqubela. I-Komishoni yeNyaniso noXolelwaniso (i-Komishoni yoXolelwaniso) yandulula ukuba urhulumente axhase ungcelele lwemifuziselo yembuyekezo ukuze kubuyiselwe isidima sokuba ngumntu nesoluntu, kuvunyelwe namakhoba akwamkele okwenzeke kwixesha elidlulileyo. I-Komishoni yoXolelwaniso yakwandulula nokuba uluntu luze lukhumbule amakhoba obukoloni-ali nokwahlulwa-hlulwa kweentlanga ngokuba neentsuku zesikhumbuzo, ngokwakhiwa kwezikhumbuzo zezwelonke, zeengingqi nezoomasipala, zize izakhiwo zikawonkewonke zithiywe amagama ngamagama amakhoba. Kukho imfuneko yokuqinisekisa ukuba amakhoba okwahlulwa-hlulwa kweentlanga ayathuthuzelwa kubomi basesidlangaleni.
99. Ekupheleni komsebenzi ebiwuthunyiwe, i-Komishoni yoXolelwaniso yangenisa uludwe lwamatyala angama-300 kwi-Gunya Lokutshutshisa eZwenilonke ngenjongo yokuba

³⁷ Socio-Economic Justice for All (SEJA) Baseline Survey, FHR, 2017

kwenziwe uphando olubhekele phaya kuze kutshutshiswe. Nangona lalinyanzelwa iGunya lokuTshutshiso, kwathi kufika u-1994 kwabe kucacile ukuba iGunya loTshutshiso alifuni kutshutshisa kula matyala. *IPromotion of National Unity and Reconciliation Act* ka-1995³⁸ yathi ukuba umntu akaxolelwanga okanye akakucelanga ukuxolelwa okanye kwaliwe noxolelo, umthetho uze uhambe indawo yawo, abenzi-bubi batshutshiwe.

100. Ukufunyanwa kwenyaniso, ngakumbi mayela nemibuzo emayela namaziko neenkqubo ezithile, kuyavunywa yaye kuyaqondwa namhlanje kumba wobulungisa bokudlulela kwelinye ixesha njengento ebalulekileyo ekulungiseni iintswela-bulungisa zokwahlulwa-hlulwa kweentlanga ukuze kuqinisekise hayi kuphela nje ukuthi imbali ikubonisa ngokuchanileyo ukulawula ngokoyikisa kwamapolisa eSecurity Branch ngokubhenca iimeko zenkohlakalo ababevalelwa kuzo abantu baze bangcungcuthekiswe nokufa kwabavalelweyo ngoxa bevalelwe ngamapolisa, kodwa kananjalo nokuqinisekisa ukuba abo babesenza ezi zinto bayaphenduliswa, ngaloo ndlela kuthunyelwa umyalezo kuMzantsi-Afrika omtsha othi ukungcungcuthekisa nokukhohlakala kwamapolisa akuyi kunyanyezelwa.
101. Kwilizwe elikhululekileyo nelentando yesininzi njengelethu, abenzi bobubi abanakuvunyelwa ukunyathela inyaniso ngeenyawo baze ngokwenza njalo bazalise imbali yethu ngeenyano ezingaphelelanga ezingayi kuluvumela uluntu ukuba luphole.
102. Umntu ngamnye noluntu ngalunye lunelungelo elingenakohluthwa lokwazi inyaniso ngokwenzekayo kwixesha elidlulileyo. Ngenxa yokuthetha izinto ezingekhoyo ngabom nokungayithethi inyaniso kwiKomishoni yoXolelwaniso, abenzi-bubi abaninzi abanyhashe amalungelo abantu baye basinda ekugocwagocweni nasekuphenduliseni ngezenzo zabo. Abasindileyo neentsapho zabo abathi bafela eluvalelweni kufuneka beyazile inyaniso yokuba bangcungcuthekiswa kanjani abathandekayo babo baza babulawa njani ukuze baxole balibale. Inyaniso kufuneka ixelwe — hayi ngabenzi-bubi, koko ngamaxhoba.
103. Kungumthwalo osemagxeni abantu baseMzantsi-Afrika bazo zonke iindidi ukuba babe namaphulo anjongo yawo ikukuphelisa zonke iintsalela ezimbi ezisaseleyo zokwahlulwa-hlulwa kweentlanga nocalulo olusuka kwixesha elidlulileyo. Ngoko ke kunyanzelekile ukuba urhulumente, icandelo lamashishini, imibutho yabasebenzi, neentlangano zokholo ukuba zithi gqi nezazo izilinganisi zokulinganisa inkqubela, zilinganisa inkqubela eziyenzileyo ekupheliseni zonke izibetho zentiyo yobuhlanga nasekuphumeleleni kwiingcamango ezintle zokwakha isizwe nokumanyana koluntu.
104. Intiyo yobuhlanga emiliselekileyo nezuzwe njengelifa kufuneka kuqubiswane nayo luluntu kuba xa kungenziwa njalo iza kunwenwa ize ityhutyhe zonke izizukulwana. Ngulo moya esiwuzwe ilifa wentiyo yobuhlanga, ukuwohloka kwimigaqo yokuphila, ukungalingani kwamathuba nobuhlwempu obugqithiseleyo, kwakunye nokukhuphisana ngobuncwane obunqabileyo, okuncedisa ukuyibhebhethekisa intiyo yobuhlanga kwakunye nentiyo yabantu bamanye amazwe, ekuyinto ethe gqi kutshanje. Ukucalulwa ngenxa yesini sabantu umntu athandana nabo nangenxa yesini umntu azibonakalisa esiso nokugonyamelwa kwabantu abathandana besisini esinye, nazo ezi zinto ziyinxaki enkulu. Kusekho okunye ekufuneka kwenziwe ukukhulisa amalungelo oMgaqo-siseko nawomthetho abantu abaligcuntswana

³⁸ Act 34 of 1995

ekuthandaneni kwabo nabesini esithile. Ukungalingani nocalulo kusekho. Kungenxa yezi nyaniso esithe saba yimfuneko esi siCwangciso.

Ingqesho

105. IKomishoni yoBulungisa kwiNgqesho, kwingxelo yayo yamva nje,³⁹ ibonisa ukuba ukumelwa kweqela labemi abamhlophe kungaphezu kokuphindwa-phindwa kathandathu koLuntu lwabo Olukhuthelayo kuQoqosho (uLuntu loQoqosho), lize iqela elingamaIndiya libe ngaphezu kokuphindwa-phindwa kathathu koLuntu lwabo loQoqosho phaya phezulu kubaphathi. Ikwabonisa ukumelwa kweqela labantsundu ukuba kumalunga nesinye kwisihlanu, kuze okweqela labebala kube malunga nesiqingatha soLuntu lwabo loQoqosho kweli nqanaba lomsebenzi.
106. **Isicangca 3** esingezantsi sibonisa ukumelwa kwamaqela athile⁴⁰ kumanqanaba ahlukeneyo omsebenzi phakathi kuka-2001 no-2017.

OCCUPATIONAL LEVEL	PERIOD	WHITE	AFRICAN	COLOURED	INDIAN	MALE	FEMALE
Top Management	2001	87%	6%	3%	4%	87%	13%
	2017	67%	14.3%	5.1%	9.4%	77.1%	22.9%
Senior Management	2001	81%	9%	5%	5%	80%	20%
	2017	56.1%	22.1%	7.7%	10.9%	66.2%	38.8%
Professionally Qualified	2001	56%	33%	6%	5%	62%	38%
	2017	36.5%	42.2%	9.6%	8.8%	53.4%	46.6%
Technical Skilled	2001	18%	58%	18%	6%	60%	40%
	2017	19.6%	61.7%	11.3%	5.6%	52.9%	47.1%

TRANSLATION OF THE ABOVE CHART

OCCUPATIONAL LEVEL = UMGANGATHO

PERIOD = UNYAKA

WHITE = ABAMHLOPHE

AFRICAN = ABANTSUNDU

COLOURED = ABEBALA

³⁹ 2017/18

⁴⁰ "Amaqela athile" ngabantu abantsundu, abafazi nabantu abaneziphene:

(a) abangabemi beRiphabliki yoMzantsi-Afrika ngokuzalwa okanye ngomnombo; okanye

(b) abathi baba ngabemi beRiphabliki yoMzantsi-Afrika ngenxa yeminyaka asebeyihleli kweli-

(i) ngaphambi kowama- 27 kuEpreli 1994; okanye

(ii) emva kowama-27 kuEpreli 1994 nabebeya kuba nelungelo lokuzuba ubumi ngenxa yeminyaka asebeyihleli kweli ngaphambi kwalo mhla, kodwa abakwazi ngenxa yemigaqo-nkqubo yokwahlulwa-hlulwa kwentlanga

INDIAN = AMA-INDIYA

MALE = AMADODA

FEMALE = AMABHINQA

Top management = abaphathi abaphezulu

Senior management = abaphathi abangentla

Professionally qualified = abawufundeleyo umsebenzi

Technical skilled = abanobuchule

107. Ngenxa yoku okungentla, kuyacaca ukuba ubulungisa kwingqesho kufuna ingqalelo eqhubekayo. Kusekho imfuneko enkulu yamanyathelo obulungisa kwingqesho eMzantsi-Afrika.
108. UHlolo-zimvo lweNgeniso neNkcitho lwakutshanje⁴¹ luqwalasela ukunyuka kwengeniso ngokweqela labemi. Sibona okona kunyuka kukhulu kusenzeka kwiintsapho zabangemhlophe. Iintsapho ezinentloko engumIndiya/Asia zibonise ukunyuka kuyi-36,8% (ukunyuka kwe-R68 013), kulandelwe kufutshane ziintsapho ezikhokelwa yintloko engumntu ontsundu waseAfrika nge-34,5% (ukunyuka kwe-R17 859). Iintsapho ezikhokelwa yintloko engumntu webala zibe nokunyuka kwe-27,7% kwingeniso (ukunyuka kwe-R30 152), ngoxa iintsapho ezikhokelwa yintloko emhlophe zibe nokunyuka okuyi-0,4% kuphela okanye malunga ne-R1 412 ngaphezulu.
109. Noko ke, nangona kukho oku kunyuka okungaka kwingeniso kwiintsapho ezingemhlophe, kusekho umsantsa omkhulu phakathi kwamaqela abemi. Iintsapho ezikhokelwa yintloko emhlophe, ngomyinge ophakathi nje, zamkela ingeniso engaphezu kokuphindwa-phindwa kayi-5.5 kunaleyo yeentsapho ezikhokelwa yintloko engumntu ontsundu waseAfrika. Ngoko ke nangona ukunyuka kwengeniso kubonisa imiqondiso emihle kakhulu, ukungalingani kuselucelomngeni olukhulu kwilizwe lethu. Nangona umncinane umahluko, iintsapho ezikhokelwa ziintloko ezingamadoda zisafumana ingeniso engaphezu kwefunyanwa ziintsapho ezikhokelwa ziintloko ezingabafazi. Noko ke, kuninzi lweentsapho ezikhokelwa ngumntu oyindoda, ingeniso ebikiweyo idla ngokuquka neyeqabane lomtshato eliphangelayo okanye isinqandamathe esiphangelayo; ngoko ke kunokwenzeka ukuba iinzuzo ezenziwe ngamaqabane omtshato omabini okanye zizithandani zombini iyenza ibe nkulu ngakumbi ingeniso iyonke yosapho. Nangona abantu baseMzantsi-Afrika beya beba zizityebi ngokuba zizityebi, jikelele kusekho ukungalingani okukhulu kuwo onke amaqela abemi belizwe.

⁴¹ Uhlolo-zimvo lwengeniso nenkcitho 2010/11, Statistics SA

Isicangca 4

	IES 2010/11 (R)	IES 2005/06 (R)	Real Growth	Increase in Rand terms
South Africa	119 542	102 401	16.7%	17 141
Sex of household head				
Male	151 186	127 914	18.2%	23 272
Female	70 830	62 397	13.5%	8 433
Population group of household head				
Black African	69 632	51 773	34.5%	17 859
Coloured	139 190	109 038	27.7%	30 152
Indian/Asian	252 724	184 711	36.8%	68 013
White	387 011	385 599	0.4%	1 412

TRANSLATION OF THE ABOVE CHART

Real growth = ukukhula kokwenene

Increase in Rand terms = ulwando ngokweeRandi

South Africa = uMzantsi-Afrika

Sex of household head = isini sentloko yosapho

Male = indoda

Female = ibhinqa

Population group of household head = Uhlanga lwentloko yosapho

Black African = abantsundu

Coloured = abebala

Indian/Asian = amaIndiya/ama-Asia

White = abamhlophe

110. La manani abonisa ukuba uhlanga lunento yokwenza kakhulu nomgangatho akuwo umntu, ngakumbi malunga nokuswela. Abantsundu baseMzantsi-Afrika ngabona baninzi kwabasweleyo eMzantsi-Afrika, nto leyo eyinyaniso ebuhlungu engaviwayo luninzi lwabamhlophe baseMzantsi-Afrika. Le yinxalenye yeentsalela ezishiyekileyo ezadluliselwa ukusuka kwiinkulungwane zeminyaka yobukolonyali eyafikelela kwincopho yayo ngokwahlulwa-hlulwa kweentlanga, okwathi kwenza ukuba uhlanga alulo umntu kuthethe ukungalingani nabanye. Eli lifa liyaqhubeka liphila kude kube namhlanje.⁴²

Ukubonelelwa ngezindlu

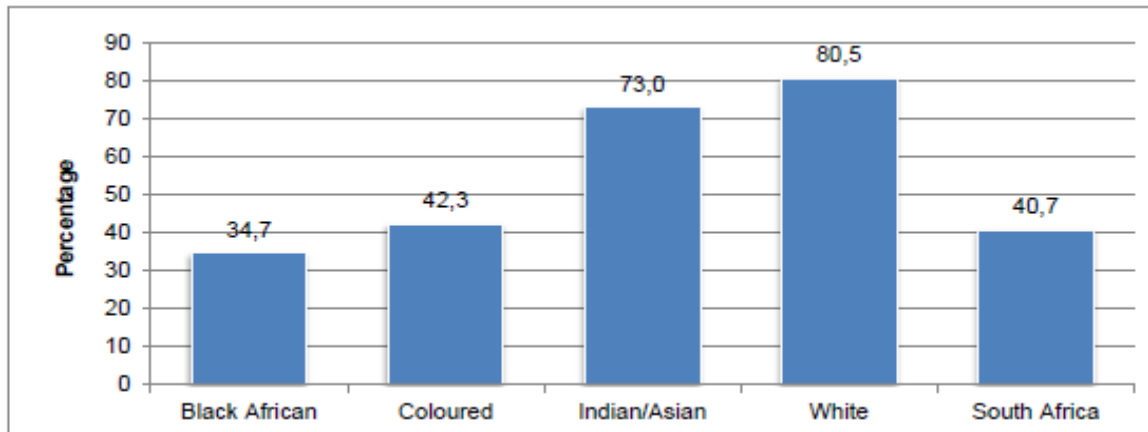
111. Okufumanisekileyo kwiGeneral Household Survey, 2017⁴³ ngenani lezindlu zokuhlala ezimagumbi mathandathu nangaphezulu ngeqela ngalinye labemi, kuboniswe kwi**Sicangca 5**. Inani lamagumbi liquka onke amagumbi akwindlu (kuquka izindlu zangasese namagumbi okuhlambela). Lo mbandela ubonisa umgangatho wokuphila wosapho kwaye unganxibelelaniswa nezinye izinto ezinjengemfundo okanye imeko ecingelwa iyeyobutyebi. Iintsapho ezikhokelwa yintloko emhlophe (80,5%) neentsapho ezikhokelwa yintloko engumIndiya/Asia (73,0%) lalilikhudlwana ithuba lokuba zihlale kwizindlu ezimagumbi

⁴² Reconciliation Barometer, IJR, 2013

⁴³ Uhlolo olwenziwa qho ngonyaka yiStatistics SA

mathandathu nangaphezulu kuneentsapho ezikhokelwa yintloko engumntu webala (42,3%) okanye yintloko engumntu ontsundu (34,7%).

Isicangca 5



TRANSLATION OF THE ABOVE CHART

Percentage = Amanani

Black African = abantsundu

Coloured = abebala

Indian/Asian = amaIndiya/ama-Asia

White = abamhlophe

South Africa = abaseMzantsi-Afrika

Ukuba nesiphene

112. Emhlabeni jikelele, abantu abaneziphene bayabukulwa, benziwe amakheswa ekubeni nenxaxheba epheleleyo eluntwini. Ngokophando olwenziwe yiKomishoni yamaLungelo eMzantsi-Afrika, abantu abaneziphene bajamelene neentlobo ngeentlobo zocalulo kwimiba ngemiba yasentlalweni, kuquka nasekufikeleleni kwiindawo zokunonophelwa kwempilo, ingqesho nemfundo.⁴⁴ Ngaphandle kokuzinkqamangela ekuqukweni kwalo lonke uluntu nasekuboneleleni abantu abaneziphene, ukulingana okukuko akusoze kubekho.
113. Okufunyaniswe ekubalweni kwesizwe ngo-2011 kubonise ukuba abaneziphene elizweni lonke bakumyinge we-7,5%. Kumaphondo kufumaniseke ukuba iphondo laseFreyistata nelaseMntla-Koloni anelona nani liphezulu labantu abaneziphene (11%), alandelwe nguMntla-Ntshona (10%) neMpuma-Koloni (9,6%). Iphondo laseNtshona-Koloni nelaseRhawutini anelona nani liphantsi labantu abaneziphene (5%). Xa kujongwa abemi

⁴⁴ South African Human Rights Commission, Research Brief on Disability and Equality in South Africa 2013 - 2017

belizwe abantsundu banelona nani liphezulu labantu abaneziphene (7,8%), balandelwe ngabamhlophe (6,5%).

114. UMzantsi-Afrika wayityikitya waza wayamkela iCRPD neSongezelelo Sokuzithandela sayo ngo-2007, kwaye unyanzelekile ngokwesi sivumelwano ukuba ufezekise iimbopheleleko zawo zokusebenzisa nokwenza ingxelo. UMzantsi-Afrika kukhona useza kukusebenzisa kweli okuqulethwe sisivumelwano iCRPD.

Ukuba yinkawu

115. Ukucalulwa ngenxa yokuba yinkawu akufumananga ngqalelo ingako kwimithetho yaseMzantsi-Afrika. Ngenxa yokuba abantu abaziinkawu bambalwa kwaye bathathwa njengabangabalulekanga eluntwini, ukucalulwa kwabo kubethwa ngoyaba kwaye akubikwa.⁴⁵ Izizathu ezahlukahlukeneyo zasentlalweni nezingokwasengqondweni zenza ukuba ibala lolusu licingelwe ngale ndlela licingelwa ngayo. Kwimbali yaseAfrika, ukucalulwa ngenxa yebala lolusu asinto intsha — inkqubo yokuba senyhwebeni nokungathandwa esekelwe ekuthini likhanya kangakanani okanye limnyama kangakanani ibala lolusu lomntu kuye kwathethwa ngayo ngokusebenzisa amabinzana anjengokuthi 'ukuba nebala', 'ukuba nethunzi', 'ukucalulwa ngenxa yebala lolusu', ukwakhekha kwebala', nelithi 'intlahla yolusu'. Naliphi na igama elisetyenziswa ukuchaza ibala lolusu lomntu lidala iingxaki, kwaye lisengaba lelicalulayo, libe yindlela ekucingwa ngayo ngobuhle, nkqu nakubantu bohlanga olunye. Kubantu abaziinkawu, ibala lolusu lwabo lichazwa ngeendlela ezingentle ngabantu baseAfrika, kuquka nokuthi baqalekisiwe.⁴⁶ Kubalulekile ukuqaphela ukuba ngoNovemba 2014, iNgqungquthela-Jikelele yeZizwe Ezimanyeneyo yathabatha isigqibo esimisela umhla we-13 kuJuni njengomhla woKwenza Abantu Bazi Ngobunkawu Emhlabeni Jikelele. Esi sigqibo esaba yimbali saqinisekisa ukuthethelelwa kobunkawu emhlabeni jikelele. ISebe lobuGcisa neNkcubeko i-#AlbinismActivismCampaign (iPhulo Lokuququzelela Ubunkawu) ngowesi-4 kuMeyi 2018.

ISAPHLUKO 5: UMZANTSI-AFRIKA NAMHLANJE

116. Asinakwenza ngathi asikuboni ukungavani kweentlanga okusekhoyo eMzantsi-Afrika namhlanje. Kunjengokuba uMondli Makhanya ebhale wathi:⁴⁷

“Asisiso isizwe esimibala-bala okomnyama ubhishophu omkhulu nomongameli wokuqala woMzantsi-Afrika “okhululekileyo” ababenqwenela ukuba sibe siso. La madoda mabini adumileyo ayenqwenela ukuba sibe ngabantu abayimela kakuhle iflegi yethu.

Ndlela le ababenqwenela ngayo ukuba sibe seso sizwe, bade bacinga ukuba sesisiso.

⁴⁵ *Colour discrimination against persons with albinism in South Africa*, M Mswela & M Nöthling-Slabbert, Department of Jurisprudence, School of Law, University of South Africa, Pretoria, South Africa

⁴⁶ M Mswela & M Nöthling-Slabbert

⁴⁷ “Of cakes and race wars”, News24, 21 January 2018,

<https://www.news24.com/Columnists/Mondli-Makhanya/mondli-makhanya-of-cakes-and-race-wars-20180121-3>

Ngelishwa akuzange kwenziwe msebenzi waneleyo ukwakha eso sizwe esingenabuhlanga, phofu ke okwakuza kusithatha amashumi-shumi eminyaka yomgudu ukusenza sigqibelele.

Siye sabhiyozela ukuphumelela kwethu ukuba sisizwe esingenabuhlanga singakhange siyijamele inyaniso ezingileyo yexesha lethu elidlulileyo size siqubisane nenkqubo yokupholis' amanxeba.

Ngoku sivuna umvuzo woko. Siphindela emva.”

117. INkundla yoMgaqo-siseko iye yakuvuma ukuba:

“Isizwe saseMzantsi-Afrika siziindidi ngeendidi kwaye besahlukene iinkulungwane ezininzi zeminyaka, ikakhulu ngenxa yemithetho nemikhwa ebikhuthaza intiyo noloyiko. Intetho ethethelela ubuhlanga neyenza abantu bacinge ngendlela efanayo ngokusekelwe kwiimpawu abanazo ezingenakuguquleka iyingozi kakhulu ekuphumeleleni ukuphila ngale migaqo njengoko isomeleza kwaye iqhubela phambili ukucalulana nokungalingani.”⁴⁸

118. Ukanti, iziganeko zentetho yentiyo ziye zanda kwiminyaka yakutshanje, ngoxa eminye imizekelo yakutshanje yentiyo yobuhlanga, yeziganeko zentiyo yobuhlanga, zentiyo yabantu bamanye amazwe nezinye izenzo zolwaphulo-mthetho lwentiyo zisanda:

- Umzekelo, umfundi ontsundu wajikiswa akavunyelwa ukuba abekho kwimidlalo yehockey eMntla-Ntshona. Wacenga abazali bakhe ukuba bamse ngemoto kwiSikolo Esiphakamileyo saseGrenswag apho kwakuza kubakho imidlalo yeBokkie Week emva kokuba enikwe invume ngumqeqeshi wakhe. Kwabonala ngathi yonke into ihamba kakuhle xa wavunyelwayo ukuba abhalise emva kokuba eveze isiqinisekiso sakhe sokuzalwa wahlawula nomrhumo wama-R30, kodwa kuthiwa suke waxelelwa ukuba iBokkie Week yeyabantwana abangabelungu kuphela.
- Izikhalazo ngotitshala weSikolo samaBanga Aphantsi saseParkdene oye watyholwa ngokungcungcuthekisa umntwana okwibanga lesithathu ngokunxiba kwakhe umchilo obomvu wamaHindu esihlahleni (iKavlava). Utitshala lowo wanqunyanyiswa emsebenzini kude kuphandwe liSebe leMfundo yamaBanga Aphantsi.
- Ummi waseMozambique wabulalwa ngo-2015 xa wayefuna ahlawule amakhwenkwana awayethenge imidiza kwivenkilana yakhe xa kwakukho ukuhlaselwa kwabemi bamanye amazwe.

⁴⁸ *Islamic Unity v Independent Broadcasting Authority and Others*, 2002 (4) SA 294 (CC) para 43.

- NgoJanuwari 2017 indlu yokunqula yamaMuslim eseKapa, iNurul Islam, yadyojwa ngegazi nangempumlo yehagu. Kuthiwa umgcini wayo wabiza amapolisa awathi wona athumela iveni yamapolisa, kodwa waxelelwa ukuba awanakuvula tyala, angabhala nje phantsi okwenzekileyo.
 - Abantu baye bafunyaniswa benetyala lokunyelisa ngokubhala amazwi entiyo yobuhlanga kumakhasi onxibelelwano.
 - Ityala lokufakwa kwibhokisi yomngcwabo ngo-2017 laba ngundaba-mlonyeni, xa indoda engumntu ontsundu yafakwa kwibhokisi yomngcwabo ngamadoda amabini angabelungu awathi aviwa kwividiyo esithi aza kufaka inyoka kwelo bhokisi aze alintumeke ngomlilo.
 - Kwityala elaziwa ngokuba lele-“Coligny Sunflower” abasebenzi basefama ababini abangabelungu eMntla-Ntshona bafunyaniswa benetyala lokubulala umntwana ontsundu ominyaka ili-16 ngokumtyhalela ngaphandle kweveni ihamba emva kokuba kuthiwa bambhaqa esiba kwintsimi yomqeshi wabo.
 - Kukaninzi behlaselwa abantu abasini simbaxa, kwaxhaphaka ukudlwengulwa kwabo kusithiwa “babuyiselwa kwindalo”.
119. I-SA Reconciliation Barometer Survey (SARB): iNgxelo ka-2017, eyenziwe yi-Institute for Justice and Reconciliation, inika ingcombolo eluncedo kakhulu engobudlelane beentlanga noxolelwaniso elizweni lethu. NgokweSARB, okuyinto enxunguphalisayo, abathabathi-nxaxheba kolo hlolo-zimvo luka-2017 balubona luluncinane utshintsho kwimiba ephambili yoluntu.
120. KwiSEJA Baseline Survey⁴⁹ abathabathi-nxaxheba kuhlolo-zimvo bacelelwa ukuba batsho abakucingayo malunga nokuba iimeko eMzantsi-Afrika ziya ziba bhetele, okanye zimi ndawonye, okanye ziya ziba mbi kusini na. Phantse isiqingatha sabo (47%) bathi bacinga ukuba iimeko ziya zisiba mbi, ngoxa ikota yabathabathi-nxaxheba yayicinga ukuba iimeko zimi ndawonye (27%) okanye ziya ziba bhetele (26%). Nangona kungazange kubekho mahluko utheni phakathi kwabathabathi-nxaxheba abangamadoda nabangabafazi, umahluko kwiintlanga waba ngonik' umdla. Abathathu kwishumi ngalinye (29%) labantu baseAfrika abantsundu bathi bacinga ukuba iimeko ziya zisiba bhetele, bacinga njalo nababini kwishumi ngalinye (22%) labathabathi-nxaxheba abangabelungu. Abathabathi-nxaxheba abangamaIndiya/Asia nabebala babengenamdla kangako licala elisingise kulo ilizwe. Abathabathi-nxaxheba abaphantse babe sisibini kwisithathu (65%) abangabantu bebala nabathabathi-nxaxheba abasisithathu kwisihlanu (62%) abangamaIndiya/Asia bathi bacinga ukuba iimeko ziya zisiba mbi — xa kuthelekiswa nesiqingatha kuphela (53%) sabelungu nesibini kwisihlanu (43%) sabantu baseAfrika abantsundu.
121. Kwakulo olo hlolo-zimvo, abalibathwana elivakalayo (44%) bavumelana kwelokuba abemi bamanye amazwe mabangavunyelwa bahlale eMzantsi-Afrika. Phantse isiqingatha sabo

⁴⁹ 2017

bonke abathabathi-nxaxheba abangabelungu (48%) nabebala (48%) bavumelana nabo kwelokuba abemi bamanye amazwe mabangavunyelwa babe kweli lizwe; batshilo nabo abantu baseAfrika abantsundu abangama-43% nabangamaIndiya/Asia abangama-36%. Okona kungathembani kukhulu kube kubantu abavela kwamanye amazwe — kokubini abamazwe aseAfrika nabangengabo abamazwe aseAfrika — kwangqineka indlela abajongwa ngayo abemi bamanye amazwe eselixeliwe ngentla. Phantse isibini kwisihlanu sabo bonke abantu abakhulu eMzantsi-Afrika ababathembi konke-konke abantu abavela kwamanye amazwe aseAfrika (38%) okanye abavela kwamanye amazwe angengawo awaseAfrika (39%).

122. Ngokubhekiselele ekwazini uMgaqo-siseko, abathabathi-nxaxheba abangamadoda (55%) ngabona ebekunokwenzeka ukuba bakhe beva ngoMgaqo-siseko okanye ngoMqulu wamaLungelo kunabathabathi-nxaxheba abangabafazi. Ngokubhekiselele kuhlangu lwabathabathi-nxaxheba, abamhlophe ngabona ebekunokwenzeka ukuba bakhe beva ngoMgaqo-siseko okanye ngoMqulu wamaLungelo, belandelwa ngabathabathi-nxaxheba abangamaIndiya/Asia (61%).
123. Ngoxa uninzi (56%) lwabantu bebala lwalukhe lweva ngoMgaqo-siseko okanye ngoMqulu wamaLungelo, bangaphantsi kwesiqingatha (48%) abathabathi-nxaxheba abangabantu baseAfrika abantsundu abakhe beva ngoMgaqo-siseko okanye ngoMqulu wamaLungelo. Abathabathi-nxaxheba abangabafazi abangabantu baseAfrika kwakungenakufane kwenzeke (44%) ukuba bakhe beva ngoMgaqo-siseko okanye ngoMqulu wamaLungelo.

ISAPHLUKO 6: UKUQUBISANA NENTIYO YOBUHLANGA NOCALULO NOKUKHUTHAZA UKULINGANA — ESIKWENZILEYO UKUZA KUTHI GA NGOKU

124. Amanyathelo ahlukahlukene athatyathwe nguMzantsi-Afrika okuzifeza iimbopheleleko zawo eziliqela ezingokoMgaqo-siseko nezingokwamalungelo oluntu zichazwe ngokweenkcukacha njengenxalenye yeembopheleleko zokunik' ingxelo onazo uMzantsi-Afrika ngokwesivumelwano samazwe ngamazwe. UMzantsi-Afrika unemithetho eluqilima yokulingana neyokuchasa ucalulo. UMgaqo-siseko ufuna ukuba uRhulumente ahlonele, akhusele, akhuthaze kwaye azalisekise amalungelo akuMqulu wamalungelo, kungurhulumente onembopheleleko ephambili yokuqinisekisa ukuba umntu ngamnye unako ukuwasebenzisa amalungelo akhe. Mayela noku, uRhulumente waseMzantsi-Afrika uphumeze imithetho eliqela ukuze aphumelelise iinjongo anazo ezingokoMgaqo-siseko zokuzusa ukulingana, isidima sokuba ngumntu nokuqhutyelwa phambili kwamalungelo oluntu neenkululeko.

Ukulingana nokuchasa ucalulo

125. Ilungelo lokulingana nokukhuselwa ekucalulweni libalasele kuMgaqo-siseko wethu.⁵⁰ UMzantsi-Afrika uwise imithetho ngemithetho yepalamente ukuphelisa ucalulo nokuqinisekisa ukulingana kwimiba ngemiba, umzekelo, ngokubhekiselele ekulweni ucalulo kumsebenzi wengqesho kukho i*Employment Equity Act* ka-1998.
126. URhulumente ukwaphumeze ne*Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)* eyalela ukucalulwa okungafanelekanga ngohlanga, ngesini nangokuba nesiphene. Lo Mthetho uyichaza intetho yentiyo njengamazwi 'anokuchazwa njengabonisa injongo ecacileyo yokwenzakalisa, okanye yokukhuthaza intiyo yobuhlanga, yesini ngokwasentlalweni, yesini ngokwendalo yomzimba, yokumitha, yobume ngokwasemtshatweni, yobuzwe okanye imveaphi ngokwasentlalweni, yebala, yokuthandana nabesini esithile, yobudala, yokuba nesiphene, yonqulo, yesazela, yenkolelo, yenkcubeko, yolwimi okanye ukuzalwa'. Le ndlela echazwe ngayo iphangalele kunokuchazwa

⁵⁰ isiqendu 9(1) Bonke abantu bayalingana phambi komthetho kwaye banelungelo lokukhuselwa ngokulinganayo ngumthetho nokuzusa ngokulinganayo kuwo.

(2) Ukulingana kuquka ukuxhanyulwa okupheleleyo nokulinganayo kwawo onke amalungelo neenkululeko. Ngenjongo yokukhuthaza ukuba kulinganwe, kusenokuthatyathwa amanyathelo okuwis' umthetho namanye amanyathelo acetyelwe ukukhusela okanye ukuphucula abantu, okanye iindidi zabantu, ezihlelekileyo ngenxa yokucalulwa okungafanelekanga.

(3) URhulumente akavumelekanga ukuba athi, ngokungqalileyo okanye ngokungangqalanga, acalule nabani na ngenye yezi ndlela zilandelayo: ngokobuhlanga, ngokobuni, ngokukhulelwa, ngobume bomntu ngokwasemtshatweni, ngobuzwe okanye ngemvelaphi yakhe ngokwasentlalweni, ngebala, ngotyekelo lwakhe ngokwesondo, ngobudala beminyaka, ngokugokeka, ngonqulo, ngesazela, ngenkolelo, ngenkcubeko, ngolwimi nangokuzalwa.

(4) Akukho mntu uvumelekileyo ukuba acalule ngokungafanelekanga, ngokungqalileyo okanye ngokungangqalanga, ecalula omnye ngenye yezi ndlela zixelwe kwisiqendwana (3). Makuwiswe umthetho yipalamente yezwelonke ukuthintela ucalulo olungafanelekanga.

(5) Ukucalula ngenye yezi ndlela zidweliswe kwisiqendwana (3) okanye ngeendlela eziliqela kwezo kukucalula okungafanelekanga ngaphandle kokuba kuveliswa izibakala ezibonisa ukuba olo calulo lufanelekile.

okukuMgaqo-siseko kuba kuquka nentiyo eyenzakalisayo, kwakunye nentetho enokuba nale njongo, ebangela uqashi-qashi ekuchazweni kwegama.⁵¹

127. *IPromotion of Equality and Prevention of Unfair Discrimination Act* ka-2000⁵² ingumthetho wokusetyenziswa kwesiqendu 9 soMgaqo-siseko. Mayela noku, lo Mthetho uthi makubekho iiNkundla Zokulingana. Injongo yeeNkundla Zokulingana kukuchophela amatyala anento yokwenza ncakasana nokunyhashwa kwelungelo lokulingana, ucalulo olungafanelekanga nentetho yentiyo, ngenjongo yokuphelisa isithunzela esisoloko sikho sasemva kokupheliswa kokwahlulwa-hlulwa kweentlanga ebesilahlula ilizwe ngokweentlanga, ngokwesini nangokokuthi unemali kusini na. Lo Mthetho uthi zonke iiNkundla Eziphakamileyo ngokuzenzekelayo ziba ziiNkundla Zokulingana, kodwa okubaluleke nangakumbi kukuba unika iiNkundla zeeMantyi amagunya angakumbi okuchophela amatyala okulingana. ISebe loBulungisa linika iiNkundla zeeMantyi igunya lokuphulaphula amatyala okulingana, bakuba abachopheli-matyala bezo nkundla nabasebenzi abasebenza kuzo befumene uqeqesho olufanelekileyo. Imimiselo yeeNkundla Zokulingana yapapashwa⁵³ zaza, ngo-2009, zonke iiNkundla zeeMantyi zaba ziiNkundla Zokulingana. Zonke iiNkundla Eziphakamileyo nazo ziyahlala njengeeNkundla Zokulingana. Oku kwenze lula ukufumana ubulungisa njengoko uluntu lunokuthi ngoku lufake izikhalazo zokucalulwa okungafanelekanga kwiNkundla yeMantyi ekufutshane nalo.
128. Uncedo oluntlobo-ntlobo olufumaneka kwezi nkundla lwenzelwe ukukhuthaza indlela yokuchophela eyeyodwa, engekho ngqongqo kakhulu ecingela iimeko zetyala ngalinye neemfuno nokuza kuba luncedo kwababambeneyo. Kukho imithetho ephangaleleyo evumela ukuba amatyala afakwe ngabantu ngabanye, ngabo babameleyo, ngabamele iqela labantu okanye udidi oluthile lwabantu, ngabamele ukulungelwa koluntu, okanye ngumbutho omele amalungu awo.
129. Abantu abadinga uncdo xa besiya kwiNkundla Yokulingana badla ngokuncedwa ngumabhalane weNkundla Yokulingana okanye yiKomishoni yamaLungelo oLuntu yaseMzantsi-Afrika okanye yiKomishoni Yokulingana Ngokwesini, kuxhomekeke kwimfuneko ekhoyo. Nangona iNkundla Yokulingana ihlala ngendlela enesithozela sazo zonke iinkundla, imigaqo neendlela zokwenza azikho ngqongqo noko kunakwiinkundla eziqhelekileyo. Ukuze umntu afak' ityala kwiNkundla Yokulingana akukho mfuneko yokuba amelwe ligqwetha. IiNkundla Zokulingana azibizi mali, into ethetha ukuba akukho mfuneko yokuba ummangali ahlawule iimali zenkundla. Phakathi kuka-2015 no-2016 naphakathi kuka-2016 no-2017 kwabakho ukuphunguka kwamatyala abikiweyo eeNkundla Zokulingana. Amanani akutshanje amatyala eeNkundla Zokulingana abikiweyo ngo-2017 nango-2018 abonisa okunye ukuphunguka ngama-51% kwinani lilonke lamatyala abikiweyo.⁵⁴

⁵¹ Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

<http://www.justice.gov.za/legislation/acts/2000-004.pdf>

⁵² Act No. 4 of 2000

⁵³ iSihlokomiso sikaRhulumente esinguNombolo R764 sika Juni 13, 2003 (Government Gazette 25065)

⁵⁴ iSebe loBulungisa noPhuhliso loMgaqo-siseko, iNgxelo yoNyaka, 2017/2018, iphepha 34.

130. linkundla zethu zikwawise izigwebo ezigxininisa ekulinganeni nezingqongqo ekusetyenzisweni kwemithetho yocalulo nemikhwa yocalulo. Umzekelo, kwityala lika *Prinsloo v Van der Linde*⁵⁵ iNkundla yavuma ukuba —

*“Ilizwe lethu linabantu bemimandla ngemimandla abangafaniyo abaneembali ezingafaniyo neemeko zokuphila ezingafaniyo. Kude kube kutshanje, iindawo ezininzi zikawonkewonke nezomntu othile zahlaselwa kukwahlukaniswa ngokomthetho kwakunye nokuba senyhwebeni nokuba selishweni okusisnyanzelo. Isiphumo sokungalingani okumiliselekileyo nokukhulu kusavakala nangoku nangona sekwafika inkqubo entsha yoMgaqo-siseko. Luninzi, ingelilo igcuntswana, elithe lahlupheka ngenxa yoku kwahlukaniswa ngokomthetho nokuba selishweni.”*⁵⁶

131. Kwityala lika *Minister of Finance v Van Heerden*⁵⁷ iNkundla yathi uMgaqo-siseko uyayivuma inyaniso yokuba abalingani bonke abantu elizweni lethu. Ukuba imigaqo yomthetho nemigaqo-nkqubo ziyayikhanyela le nkqubo, oko kuya kusuka nje kukhokelele ekukwenzeni kube neengcambu ngakumbi ukungalingani:

*“Ukusetyenziswa komthetho yile Nkundla kukwenza kucace ukuba apho linokufikelela khona ngenene ilungelo lokulingana kufanele kuqondwe ngokujonga imbali yethu nemigaqo esisiseko yoMgaqo-siseko wethu.”*⁵⁸ Njengoko sibonile, injongo enkulu yoMgaqo-siseko kukudalwa kwesizwe esingenabuhlanga nesingacaluli ngesini esinesidima sokuba ngumntu, esilawulwa kukongama komthetho, imigaqo yentando yesininzi namalungelo oluntu.⁵⁹ Ukusuka apho kuthi ingcamango yokulingana egqithela ngaphaya kokulingana nje nokungacaluli nje okufuna ukuphathwa kwabantu ngokufanayo, nokuba kuqalwa phi na.”⁶⁰

132. Kwityala lika *Minister of Home Affairs v Fourie* iJaji uSachs yathi —

*“Isizwe sentando yesininzi, esidibanisa bonke abantu, esinenkathalo nesineminqweno samkela wonk’ ubani kwaye sibamkela abantu beyiloo nto bayiyo. Ukohlwaya abantu ngenxa yabantu abangabo okanye ngenxa yento abayiyo kukubudelela okukhulu ubuntu abubo umntu nokunyhasha ukulingana kwakhe nabanye. **Ukulingana kuthetha ukubaxhalabela ngokulinganayo abantu nokubahlonela bonke nokuba abafani kangakanani. Akuthethi kuthi mabangafani. Ukuhlonela amalungelo oluntu kufunisa ukuzivuma umntu onguye, hayi ukuzikhanyela. Ngoko ke ukulingana akuthethi ukuba kwinqanaba elinye lokwenza okanye ukuphakamisa olunye uhlobo njengoluphakamileyo kunolunye, olunye lube loluphantsi kunolunye, koko kukuvuma ukuba nokukwamkela ukuba***

⁵⁵ 1997 (6) BCLR 759

⁵⁶ isiqendu 20

⁵⁷ 2004 (11) BCLR 1125 (CC)

⁵⁸ *Brink v Kitshoff* 1996 (4) SA 197 (CC); 1996 (6) BCLR 752 (CC) at para 40; *Prinsloo v Van der Linde and Another* 1997 (3) SA 1012 (CC); 1997 (6) BCLR 759 (CC) at para 31; *Pretoria City Council v Walker* 1998 (2) SA 363 (CC); 1998 (3) BCLR 257 (CC) at para 26

⁵⁹ See, for example, sections 1(a), 7(1) and 39(1)(a).

⁶⁰ Para 26

asifani. Ubuncinane ke, kubethelela into yokuba ukungafani akumele kube sisizathu sokubukulwa, sokungazelwa ntweni nesokuba lizothe. Xa kujongwa kakuhle, kudala udlamko oluziswa kukungafani nakwesiphi na isizwe.”⁶¹

133. Kwityala lika *Minister of Home Affairs and Others v Watchenuka* inkundla yavuma ukuba isidima sikho kubo bonke abantu kungakhathaliseki ukuba bangabaliphi ilizwe—

*“Isidima sokuba ngumntu asiyi ngokuthi ungummi waliphi ilizwe. Sikho kubo bonke abantu — abangabemi nabangengabo abemi ngokufanayo — ngenxa nje yokuba bengabantu. Kwaye logama loo mntu ekweli lizwe — nokuba kungasiphi na isizathu — kufuneka sihlonitshwe, kwaye sikhuselwa sisiqendu 10 soMqulu wamaLungelo.”*⁶²

134. Ngamafuphi, izigqibo ezikhutshwa ziinkundla zethu ziyaqhubeka ziqukwa kwimigaqo-nkqubo kaRhulumente ukuqinisekisa ukomelezwa kwenkcubeko yamalungelo oluntu elizweni.

Izenzo zolwaphulo-mthetho zentiyo nentetho yentiyo

135. Izenzo zolwaphulo-mthetho zentiyo zizenzo zolwaphulo-mthetho ezibhekiswe emntwini othile, ezingabhekiswanga nje kuphela kulowo olixhoba, koko nakwiqela angowalo. Ngaloo ndlela umntu olixhoba udla ngokuba ngumfuziselo weqela elikhudlwana labantu. Nangona izenzo zolwaphulo-mthetho zentiyo zinokwenziwa nakubani na, kudla ngokuba ngamaqela angajongelwa ntweni ekubhekiswa kuwo. Siphila kwi labathi eliya lihoya kakhudlwana ukungafani okukhoyo, i labathi eliya lingakwazi ukubanyamezela abanye. Zixhaphakile izenzo zolwaphulo-mthetho zentiyo okanye intetho yentiyo kwisizwe sethu. Kwityala lika *SAHRC v Qwelane*, iNkundla Yokulingana yavuma ukuba inkululeko yokuthetha ayinakukhusela intetho eyingozi kwimigaqo yoMgaqo-siseko nakumalungelo oluntu, nesongela ubuntlantluninzi bentando yesininzi.⁶³
136. UMzantsi-Afrika unemithetho eliqela ethetha ngocalulo enjenge *Promotion of Equality and Prevention of Unfair Discrimination Act* (PEPUDA) kwakunye nesiqendu 9 soMgaqo-siseko, kodwa awukho kule mithetho owenzelwe ngokukhethekileyo ukuqubisana nengxaki yolwaphulo-mthetho lwentiyo. IPEPUDA iqubisana nentetho yentiyo, ucalulo olungafanelekanga nokumenza intlondi umntu. Igama elithi “ulwaphulo-mthetho lwentiyo” alikho naphi na kulo Mthetho.
137. Kubalulekile ukuphawula ukuba iPEPUDA iyavuma ukuba ucalulo olungafanelekanga nentetho yentiyo **zisenokuba** zizenzo zolwaphulo-mthetho yaye kufuneka zithathwe njengento eyenza isenzo somntu sibe sibi kakhulu xa kucingelwa isigwebo amakasini kwe. Kodwa iPEPUDA ayiqubisani nezenzo zolwaphulo-mthetho ngasinye-ngasinye nangokungqalileyo, njengoko isenza njalo ekwenzeni intlondi, kucalulo nakwintetho yentiyo.

⁶¹ isiqendu 60

⁶² Minister of Home Affairs and Others v Watchenuka and Others 2004 (4) SA 326 (SCA)

⁶³ SAHRC v Qwelane case no EQ44/2009 (EQ13/2012) EQC (18 August 2017)

IPEPUDA inobunye ubuthakathaka bokuba ijolise ngokukhethekileyo (kwisiqendu 28(1)) kucalulo lobuhlanga, kucalulo lwesiphene anaso umntu nakucalulo lwesini, kodwa ayiquki nocalulo lokuba umntu ungowaliphi ilizwe okanye olokuba uthandana nabantu besini esithile. Ngale ndlela, iPEPUDA idala 'intiyo ngokwezigaba' ngokubeka phambili iintlobo ezithile zocalulo kunezinye. Obunye ubuthathaka bePEPUDA kukuba akugxininiswa kangako ekufumaneni intsusa.

138. Kungokunje kukho uMthetho Oyilwayo obizwa ngokuba yi*Prevention and Combating of Hate Crimes and Hate Speech Bill*, oye wathiwa thaca ePalamente. Lo Mthetho Oyilwayo usekelwe kwizindululo eziqulethwe kumgaqo-nkqubo oye waqulunqwa. Ukuqulunqa umthetho wepalamente othile ongezenzo zolwaphulo-mthetho lwentiyo kuza kuba nezinto eziliqela eziluncedo. Kuza kunceda ukuba kubekho ukuchazwa kwegama okufanayo kolwaphulo-mthetho lwentiyo kubo bonke ababandakanyeke kwinkqubo yobulungisa yolwaphulo-mthetho;⁶⁴ kuza kuthumela umyalelo ocacileyo oya eluntwini othi izenzo zolwaphulo-mthetho lwentiyo aziyi kunyanyezelwa eMzantsi-Afrika; kuza kunika abacuphi nabatshutshisi izixhobo ezingakumbi zokuba babenze baphendule abenzi bezi zenzo zolwaphulo-mthetho; kuza kuba yindlela yokubek' esweni imigudu nokwenzekayo ekuqubisaneni nezenzo zolwaphulo-mthetho lwentiyo; kuza kwenza ukuba kubekho ulungelelwaniso olunempumelelo phakathi kwabaniki-nkonzo bakarhulumente ukunciphisa isiphumo sokuxhatshazwa okuzalwa kokunye kwamaxhoba ezenzo zolwaphulo-mthetho lwentiyo. Ukuxhatshazwa okuzalwa kokunye kwenzeka xa amaxhoba esenziwa izenzo ezingafanelekanga okanye ebuzwa imibuzo engafanelekanga okanye engenaluvulwano ngamapolisa, ngamagosa empilo okanye ngamagosa obulungisa.

Intiyo yabantu bamanye amazwe

139. Emva kweziganeko zika-2015 zokugonyamelwa kwabemi bamanye amazwe, icebo likaRhulumente, ebambisene namacandelo ngamacandelo oluntu ekuzinciphiseni nasekuzithinteleni ngokukhuthaleyo ezi zisongelo, lachazwa kwisicwangciso esintlantluninzi nesidibanisa konke. Imigudu kaRhulumente ilungelelaniswa kwelona nqanaba liphezulu, phakathi kwezinye izinto, ngeKomiti zabaPhathiswa ezintathu eziziintloko. Ezi Komiti zabaPhathiswa yiKomiti yabaPhathiswa engokufuduka, iKomiti yabaPhathiswa engokumanyana koluntu, neKomiti yabaPhathiswa engomgaqo-nkqubo malunga nabemi. Umsebenzi ewuthunyiweyo iKomiti yabaPhathiswa engokufuduka wandiswa ukuba uquke nabo bonke oonobangela bokungavani koluntu lwakowethu nabantu bamanye amazwe.
140. Enye yeenkalo ekuqutyiswana nazo mayela noku, kukuqwalaselwa ngokutsha kokusetyenziswa kwemigaqo-nkqubo yobuDlelane nabaSebenzi apho kuchaphazela abantu bamanye amazwe; ukusetyenziswa kwemithetho elawula iilayisenisi zamashishini; ukulawulwa kwemida yelizwe nemigaqo-nkqubo yokufuduka yelizwe ngokubanzi. Ngumsebenzi oqhubekayo lo kwaye iKomiti yabaPhathiswa iqalise ukubonisana nabantu abachaphazelekayo ngenjongo yokufuna isisombululo esiya kuhlala sihleli seengxaki ezivezwa luluntu nangabantu bamanye amazwe. Ngokwendlela yokusebenza kweKomiti

⁶⁴ Umzekelo, iNational Policy Guidelines yoludwe Lokuxhotyiswa Kwamaxhoba idwelisa 'Amakhoba Okuxhatshazwa Ngentiyo' njengeqela eliphambili loncedo, kodwa akukho kuvunywa kwengxaki 'yamaxhoba okuxhatshazwa ngentiyo' kuwo nawuphio na umthetho wepalamente weli lizwe.

yabaPhathiswa, iNational Joint Operational and Intelligence Structure (NATJOINTS), esisakhiwo sokulungelelanisa ukusabela kukarhulumente kwiimeko zequbuliso zolu hlobo, iye yenziwa yaqalisa ukusebenza. Ngaphezu koko, iKomiti yobuChwepheshe ekukho kuyo abaLawuli-Jikelele bawo onke amasebe achaphazelekileyo, inika inkxaso ebaluleke kunene kumsebenzi omkhulu ekufuneka wenziwe ekuqubisaneni noonobangela-ncakasana boku kungavani. Ezi zakhiwo zibini zinika inkxaso efunekayo kwiKomiti yabaPhathiswa.

141. Makuqatshelwe ukuba njengexalenye yomsebenzi weKomiti yabaPhathiswa, uMongameli ubize iintlanganiso zabachaphazelekayo eMzantsi-Afrika ukuba baxubushe umgaqo-nkqubo wokufuduka welizwe baze baxubushe indlela amacandelo ngamacandelo anokusebenza ngayo norhulumente ukukhuthaza ukufuduka okunocwangco nobudlelane obuhle phakathi kwabemi nabantu bamanye amazwe. Kwezi ntlanganiso kuye kwabakho abamashishini, abemidlalo, abemibutho yabasebenzi, abemibutho yobugcisa nemidlalo, iinkokeli zonqulo, imibutho yaseluntwini, imibutho yolutsha, abantwana, abantu abaneziphene nabasemagunyeni kwantu. Abathabathi-nxaxheba bavumelene ngamxholo-mnye ekukugxibheni nokukuchasa ukuhlaselwa kwabantu bamanye amazwe. Baye bazinqamangela kananjalo ukusebenza nabantu beendawo abakuzo ukwakha ukumanyana koluntu. Ngaphezu koko, uMongameli ukwameme abameli babantu bamanye amazwe abahlala eMzantsi-Afrika. Bonke abathabathi-nxaxheba baye baba mxholo-mnye ekuyivumeni nasekuyincomeni imigudu karhulumente yokuphelisa ukuhlaselwa. Baye bazinqamangela ekusebenzisaneni ndawonye nabasemagunyeni baseMzantsi-Afrika ukuqubisana nemicelomngeni. Kukwamele kuqatshelwe ukuba urhulumente uqalise ezikolweni iinkqubo zokuchasa ukuhlaselwa kwabemi bamanye amazwe namaphulo okumanyana koluntu.

142. Amanye kumanyathelo asusela ekungeneleleni kweJCPS aquka alandelayo:

- Amapolisa aye abeka phambili ukuphandwa kwala matyala aze asebenzisana ngokusondeleyo neGunya loTshutshiso leZwelonke kwakunye neenkundla ekuqubisaneni namatyala anjalo — ngakumbi apho kubanjwe inkumbula yabantu. IGunya loTshutshiso leZwelonke lithe gqi nezicwangciso zokulungiselel' imeko engekehli ukuze liwasingathe kwaye liqubisane kakuhle namatyala ngokutyibilikayo nangokukhawuleza. Ngaphezu koko, abazinikeleyo ooSekela-Mlawuli woTshutshiso, abaTshutshisi abaziiNtloko, abaTshutshisi abakhulu, nabaTshutshisi abaphetheyo kwinqwanqwa elisezantsi baye babelwa ukuba babek' esweni uphando olwenziwa ngamapolisa, batshutshise, banike nokhokelo kulo. Abatshutshisi baye benziwa bavakalelwa kabukhali baza banikwa izikhokelo zokuba bangaqubisana njani namatyala anjalo ngeyona ndlela ilungileyo. Apho kuyimfuneko khona, kuhlala iinkundla ukuncedisa ekubekeni phambili la matyala ngako nje esakulungela ukuxoxwa.
- Ukubekw' esweni kwamatyala asusela kugonyamelo nokubeka phambili ukuphandwa kwawo nokuxoxwa kwawo kuyaqhubeka. Ngaphezu koko, iSebe loBulungisa, amaPolisa neGunya loTshutshiso baphezu kokuqwalasela ngokutsha amatyala awarhoxiswayo, avalwa engaphandwanga okanye amatyala apho abantu bafunyaniswa bengenatyala ngenxa yeengxakana ezibekho ekuxoxweni kwetyala,

ukuze kuqutyiswane nezo ngxakana eziye zabakho, kuvalwe namakroba athe abonwa. IGunya loTshutshiso likwathe gqi nezikhokelo emazisetyenziswe ngabatshutshisi kumatyala anjalo, kwaye ezi zikhokelo zinikwa nabanye aban enxaxheba, ngakumbi amaPolisa. Kuye kwaqaliswa amaphulo aseluntwini ukukhuthaza inkqubo yobulungisa nokufundisa abantu ngamalungelo oluntu abantu bonke. Okubaluleke nangakumbi kukuba iSebe loBulungisa liye laba neentlanganiso ezibalulekileyo noluntu ukubalaselisa ukuzinkqamangela kukarhulumente ekukhuseleni amalungelo oluntu. Phakathi kwezinye izinto, iintlanganiso zeSebe loBulungisa noluntu ziye zagxininisa kuMqulu wamaLungelo, intiyo yabantu bamanye amazwe nokulingana.

- Amagosa eGunya loTshutshiso kumaphondo aye akhuthazwa ukuba athabath' inxaxheba kwiingxoxo zoluntu ezilungiselelwe yiKomiti yamaLungelo ngenjongo yokufundisa abantu ngeengxaki ezikhokelela ekubeni abantu bamanye amazwe bawashiye amazwe abo nangegalelo labo kuqoqosho lweli lizwe. Ekuchaseni ibheyile, apho kuyimfuneko khona, abatshutshisi bakhumbuza inkundla into enokwenzeka yokuba kugrogriswe amangqina okanye abamangali, neziphumo okunokuthi kube nazo ngokubanzi kubulungisa nasekongameni komthetho.
- ISebe leeNkonzo zeeNkundla kwiSebe loBulungisa ligcine kuvimba walo wengcombolo iitoliki zeelwimi zamanye amazwe ezinokuncedisa ekutolikeneni xa kufuneka kumatyala abantu bamanye amazwe.

143. Kuye kwenziwa nezindululo yiKomiti Yethutyana Eyintlanganisela yePalamente Engokuphandwa Kokugonyamelwa Kwabantu Bamanye Amazwe naliQela Elikhethekileyo leMfuduko Nokumanywa Koluntu KwaZulu-Natal, esihlalo yayo inguJaji Navi Pillay. IKomiti yamaLungelo ibize iMbizo Yokuphanda Ngemfuduko, iNtiyo Yabantu Bamanye Amazwe Nokumanyana Koluntu ngoFebruwari 2018. Injongo yale mbizo yokuphanda ibikukuphonononga ingxaki yabafudukela kweli loMzantsi-Afrika, kujoliswe ekuphandeni:

- oonobangela abayingcambu nezinto ezikhwezela intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho;
- ubungakanani bokuxhaphaka kokuhlaselwa kwabantu bamanye amazwe nokunganyamezelani okuyelele apho elizweni;
- iingxaki ezinkundlwana ezimayela nendlela abaphathwa ngayo abantu bamanye amazwe elizweni, kuquka nemicelomngeni abajamelana nayo abafudukeli ekuhlalisaneni nabantu beli;
- ubungakanani bokuhlaselwa kwabantu bamanye amazwe okumiliselekileyo, kugxininiswa ekuphandeni imiqobo abajamelana nayo abantu bamanye amazwe ekufumaneni amaphephamvume ayimfuneko;
- ukufumana inkxaso neenkonzo ezisisiseko;
- imikhwa yengqesho engaqinisekanga nedla ngokuba nobungozi abantu abazizisulu njengabafudukeli abajamelana nayo nokubukulwa okunabileyo kwabantu bamanye amazwe;
- ukuba izindululo zangaphambili ziye zasetyenziswa kangakanani, ngakumbi izindululo ezikwingxelo yeKomishoni ka-2010, kuhlolisiswe namanyathelo

athatyathiweyo emva kokugonyamelwa kwabantu bamanye amazwe ngo-2015 ukukhuthaza ukuxutywa kwabantu bamanye amazwe nabahlali basekuhlaleni;

- ukuvisisana kwemithetho yepalamente nemigaqo-nkqubo ngokwembono yamalungelo, nesiphumo okunaso kumalungelo abafudukele kweli;
- ukuqondwa nokusetyenziswa komthetho nemigaqo-nkqubo notshintsho olwenziwa kwimimiselo negalelo lako ekuqhutyelweni phambili kwetyheneba nokucalulwa kwabafudukele kweli;
- ukuqondwa nendima yezenzo zolwaphulo-mthetho lwentiyo nesiCwangciso seZwelonke Sokuthabath' iNyathelo ukuphelisa iNtiyo Yobuhlanga, uCalulo Lobuhlanga, iNtiyo Yabantu Bamanye Amazwe Nokunye Ukuganyamezelani Okuyelele Apho, kuquka nendlela okunokuthi ngayo kuchaphazele okanye kube negalelo kumalinge angoku okulwa nokuhlaselwa kwabantu bamanye amazwe;
- indima yamajelo eendaba noosaziwayo ekuqhubeleni phambili okanye ekulweni neendlela zokucinga ezimalunga nemfuduko; kwakunye
- nemicelomngeni abajamelana nayo abafudukele kweli ekuxubaneni noluntu lwaseMzantsi-Afrika namanyathelo anokuthatyathwa ukukhuthaza ukumanyana koluntu.

Abantu abambaxa ngesini

144. Ukusekwa kweQela Elabelwe uMsebenzi leZwelonke lisekwa liSebe loBulungisa ngo-2011 kwakunenjongo yokulwa ukucalulwa okuqhubekayo kwabantu abathandana nabesini esithile nabambaxa ngesini. ISebe loBulungisa laqalisa isiCwangciso seZwelonke Sabantu Abambaxa Ngesini libonisa ukuzinkqamangela kukarhulumente kwaye lakhupha imigqaliselo yeCebo leZwelonke Lokungenelela lokuqubisana nogonyamelo olubhekiswe kwabesini esithile nabathandana nabesini esithile kwakunye nemigqaliselo yeqela lempendulo ekhawulezileyo lokukhawulezisa amatyala kwinkqubo yobulungisa bolwaphulo-mthetho.
145. Ngo-2012 xa uMzantsi-Afrika wawuthumela iNgxelo yawo yeZwelonke kwiUniversal Periodic Mechanism of the United Nations Human Rights Council, wanconywa ngamazwe angamalungu eZizwe Ezimanyeneyo ngokuzinkqamangela kwawo kumalungelo oluntu nasekuphuculeni ubomi babemi bawo, ukunikezelwa kweenkonzo ezisisiseko ezinjengokubonelela ngezindlu, impilo nemfundo, wanconywa uMzantsi-Afrika nangendima yawo enkqenqeza phambili kwiUnited National Human Rights Council, ngakumbi malunga namalungelo amabhinqa athandana namanye amabhinqa, namadoda athandana namanye amadoda, nawabantu abambaxa ngesini. UMzantsi-Afrika wabongozwa kananjalo ukuba uthi gqi namanyathelo angxamisekileyo okuqubisana nokugonyamelwa kwabantu abambaxa ngesini.
146. Kwathi xa iQela Elabelwe uMsebenzi leZwelonke lisekwa kwakhona ngoMeyi 2013, iSebe loBulungisa likunye nabameli bamaqumrhu akwiSahluko 9 soMgaqo-siseko nabemibutho yasentlalweni enjengeFoundation for Human Rights, lazibekela injongo yokuphumelela kwimisebenzi eliqela emikhulu. Phakathi kwayo singabalula ukuqulunqa iCebo leZwelonke Lokungenelela lokusabela nokuthintela izenzo zolwaphulo-mthetho ezibhekiswe kwabesini esithile nabathandana nabesini esithile nezenziwa kwabambaxa ngesini, nokuqulunqa isiCwangciso Sokusetyenziswa Ngaphakathi Kwicandelo Elithile esiya kudibanisa

amanyathelo aziintloko nawokuncedisa, ngaphakathi nangaphandle kweSebe loBulungisa, njengokuqulunqwa ngaxesha-nye koMthetho Oyilwayo iHate Crimes Bill noMgaqo-nkqubo, neHate and Bias Crime Monitoring Forum. IQela Elabelwe uMsebenzi leZwelonke lazimisela ukuba liza komeleza ukukwazi kweeCSO ukunikezela ngeenkonzo eziyelele apho.

147. Lazimisela ukuphucula unxibelelwano namanye amasebe karhulumente, ukwenza amaphulo ngaphakathi kwiSebe loBulungisa, njengephulo Lokufumana uBulungisa Nokukhuthazwa KwamaLungelo oMgaqo-siseko, iPhulo langoku leSEJA kwakunye nokusebenzelana kufutshane namaqumrhu achaphazelekayo eSahluko 9 soMgaqo-siseko — anjengeKomishoni yamaLungelo oLuntu neKomishoni Yokulingana Ngokwesini — ukulwa intiyo yobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyebele apho, kuze ngaloo ndlela kuqubiswane neziphumo zeentlobo ezahlukeneyo zocalulo olujoliswe kubantu abambaxa ngesini. Liye lazimisela ukuphucula ukusingathwa kwamatyala ngabathabathi-nxaxheba abachaphazelekayo kwinkqubo yobulungisa yolwaphulo-mthetho, kuquka neNkonzo yamaPolisa oMzantsi-Afrika, iGunya loTshutshiso leZwelonke, iSebe loPhuhliso loLuntu, iSebe leMpilo neSebe loLungiso-zimilo. Okokugqibela, liye laba nenjongo yokusebenzisa, ukulungelelanisa, ukubek' esweni nokuphonononga iCebo leZwelonke Lokungenelela nezinye iinjongo eziyelele apho.
148. Kwenziwe inkqubela ebonakalayo ukufeza ezi njongo. Ukuze kwenzeke oko, iCebo leZwelonke Lokungenelela, elijoliswe ekuthinteleni nasekusabeleni ekugonyamelweni kwabantu abathandana nabesini esithile, liye laqosheliswa laza laqalisa ukusetyenziswa. IsiCwangciso Sokusetyenziswa Ngaphakathi kwiCandelo seli Cebo siye saqosheliswa. IQela Lokusabela Okukhawulezileyo liyahlangana ukuze liqwalasele inkqubela eyenziweyo kumatyala amatsha nangekaqosheliswa kwinkqubo yobulungisa bolwaphulo-mthetho, ngoxa kuye kwasekwa amaqela amacandelo amaninzi abelwe umsebenzi kuwo onke amaphondo, ngaloo ndlela kuphuculwa yaye kusomelezwa umbandela wokumelwa nothabatho-nxaxheba kwiQela Elabelwe uMsebenzi leZwelonke namanyathelo okufundiswa koluntu aqalisiweyo. Ukuqinisekisa ukulingana kwabantu bonke kuthetha ukuba kufuneka sisabele ngqo kwiziganeko zocalulo nakwizenzo zolwaphulo-mthetho ezenziwa kubantu abambaxa ngesini, ngokusebenzisa amacebo awenziweyo phantsi kweQela Elabelwe uMsebenzi leZwelonke. Ngaphezu koko, kufuneka ngokubambisana sixhase amaphulo okufundiswa nokuqeqeshwa koluntu aqalwe phantsi kweQela Elabelwe uMsebenzi leZwelonke.

Abantu bomthonyama

149. Abemi bomthonyama boMzantsi-Afrika abamalunga nama-320 000 baquka amaSan — ama-!Xun, amaKhwe, namaKhomani — abangabantu abangamaNama, amaGriqua nabayinzala yamaKoranna, nama-“Khoisan emvuselelo”, ekuthi xa kuthethwa ngabo bebonke kuthiwe ngamaKhoisan. Ngo-1996 urhulumente owayesandul' ukunyulwa wentando yesininzi wathabatha amanyathelo okuwavuma amalungelo amaKhoisan kwiSiquendu 6 soMgaqo-siseko, wafuna ukuba iPan South African Language Board (PanSALB) iphakamise kungekuphela iilwimi ezilishumi elinanye, koko neelwimi zamaKhoi, nezamaNama nezamaSan. U-PanSALB wasungula iBhodi Yeelwimi yeZwelonke yamaKhoi namaSan.

150. Emva konyulo lokuqala lwentando yesininzi ngo-1994, nanjengenxalenye yecebo eliquka konke lokuwavuma amaKhoi-San njengabantu abangabo, kwasekwa iQonga lamaGriqua leZwelonke. Eli qumrhu lathi lacebisa ukuba kusekwe iqumrhu lezwelonke lokumela abantu abahlukahlukeneyo abangamaKhoi-San eMzantsi-Afrika elaliya kuthi lisebenze njengequmrhu elinye awayeya kuthi uRhulumente abonisane nalo ngayo yonke imibandela ephathelele kumaKhoi-San. Ngowama-27 kuMeyi 1999 kwasekwa iqumrhu lezwelonke elingasekwanga ngokomthetho wepalamente elathi laziwa ngokuba liBhunga leZwelonke lamaKhoi-San. (iBhunga lamaKhoi-San).
151. URhulumente uyaqhubeka esebenzisana nalo kwaye elixhasa iBhunga lamaKhoi-San elisebenza njengequmrhu elinye abonisana nalo ngayo yonke imibandela ephathelele kumaKhoi-San. IBhunga lamaKhoi-San linamalungu angama-30 amela izizwana ezintlanu eziphambili zesizwe samaKhoi-San (amaGriqua, amaSan, amaKhoi aseKoloni, amaKoranna namaNama). La malungu aye abandakanyeka ekuvelisweni koMthetho Oyilwayo Wobunkokeli Bomthonyama NobamaKhoi-San (uMthetho Oyilwayo wamaKhoi-San) oye waphunyezwa kutshanje yiNdlu yoWiso-mthetho naliBhunga leZwelonke lamaPhondo. Lo mthetho wenza ukuba zivunywe ngokomthetho wepalamente iinkokeli zamaKhoi-San nabantu bazo.⁶⁵ UMgaqo-siseko uyithatha njengebaluleke kunene imigaqo yo-“bunye” noku-“ngafani”. Uqulethe amazwi alivumayo ilungelo labantu (okanye abantu bomthonyama) lokuba bazenzele izinto zenkcubeko yabo, zeelwimi zabo nezonqulo lwabo.
152. UMzantsi-Afrika uye wawenza ukuba asebenze kwaye wawaxhasa ngemali amanyathelo asebenzisekayo kwakunye namaphulo abalulekileyo emfundo, oqoqosho nawenzululwazi ngenjongo yokukhusela nokubalaselisa abantu bomthonyama. Lisaziwa ngokuba luLwazi ngaBantu boMthonyama, eli phulo elijonge phambili lidibanisa abantu bomthonyama beendawo ngeendawo, iiyunivesithi, amaziko ophando namaqabane kuqoqosho, kwaye luyaxhaswa ngurhulumente. I-Ofisi yoLwazi ngaBantu boMthonyama yeSebe leNzululwazi nobuChwepheshe ifumene ukuqhwatyelw’ izandla ngamazwe ngamazwe ngenyathelo layo elitsha ekuphuculeni ulwazi ngabantu bomthonyama elizweni.
153. IKomishoni yamaLungelo iye yathi mayiqhwatyelw’ izandla into yokuba uMzantsi-Afrika uthabathe amanyathelo aya phambili ekukhuseleni amalungelo abantu bomthonyama, kuquka ukusekwa kwamaqumrhu athile amaninzi namaziko nokuqulunqwa kwemithetho emininzi nemigaqo-nkqubo ejoliswe ekuthinteleni ucalulo olungafanelekanga nasekukhuseleni amalungelo ezizwe zomthonyama. La manyathelo aquka, phakathi kwamanye, intabalala yemithetho ejoliswe ekukhuseleni ulwazi ngezizwe zomthonyama kwakunye nezicwangciso zokubuyiselwa komhlaba.

⁶⁵ Iinjongo zalo Mthetho Oyilwayo kukuba avunywe amaKhoi-San, kudityaniswe (emva koko kutshitshiswe) uMthetho weNdlu yeZwelonke yeeNkokeli zoMthonyama ka-2009, ne*Traditional Leadership and Governance Framework Act* ka-2003; kukuqinisekisa ukuba kubakho indlela enye efanayo ekusingatheni nayo yonke imibandela ephathelele kwiinkokeli zomthonyama; kukuqubisana nokusilela okukhoyo kule mithetho mibini eza kutshitshiswa, nokwenza utshintsho oluzalwa lolunye kweminye imithetho.

Intiyo yobuhlanga nokungaginyeki ncam kumajelo eendaba aphambili nawasekuhlaleni

154. Intiyo yobuhlanga iyaqhubeka izibonakalisa kumajelo eendaba aqhelekileyo eMzantsi-Afrika, wona ngokwawo ophantsi koxinzelelo lokwanda kwemibhobho engamajelo eendaba. Kwezinye iimeko amajelo eendaba aye aba ngumbhobho wentiyo yobuhlanga enganqandekiyo. Ngaphezu koko, ungquzulwano lobuhlanga ludubula lube ziimfazwe zokugibiselana ngamazwi phakathi kwabasebenza kumajelo eendaba ngokwabo. Amajelo eendaba nezinye iindlela zokuqhagamshelana zikawonkewonke, ezinjenge-intanethi namakhasi onxibelelwano, adlala indima ebalulekileyo ekukhuthazeni ukuthetha ngokukhululekileyo nasekubeni kulinganwe. Kodwa nangona inkululeko yokuthetha nenkululeko yokunqula okanye yokukholelwa zixhomekeke enye kwenye kwaye zisomelezana, inkululeko yokuthetha ayimele inyashe ilungelo lokuhlanelwa kwesidima. Kwelinye icala, ukuveliswa okukhawulezileyo kweendlela zobuchwepheshe ezintsha zonxibelelwano nezokufumana ingcombolo, ezinjenge-intanethi namakhasi onxibelelwano, kukhuthaze ukusasazwa ngakumbi kweentetho zentiyo yobuhlanga nezikhuthaza ukuhlaselwa kwabantu bamanye amazwe okunokuthi kuphehle ugonyamelo lobuhlanga.
155. Ukusabela ekubeni zizisulu okwandayo kwamaxhoba esiba ngamaxhoba olwaphulo-mthetho ngeekhompyutha okanye i-intanethi, uMzantsi-Afrika uye wasebenzisa iindlela zokungenelela eziliqela ezichuliweyo eziquka ukwamkelwa kwemiGaqo-nkqubo yeZwelonke Yokukhuseleka kwiKhompyutha Okanye kwi-Intanethi, ngo-2012. Imibandela yentiyo yobuhlanga kwi-intanethi nakumakhasi onxibelelwano kuqubiswana nayo ngokubhekele phaya ngemithetho yepalamente ngenjongo yokulwa ulwaphulo-mthetho ngeekhompyutha okanye i-intanethi.⁶⁶ Ilizwe liphezu komzamo wokugqibezela umthetho wepalamente ngolwaphulo-mthetho olwenziwa ngeekhompyutha okanye nge-intanethi. Oku kuvumelana neSivumelwano Esiseluvavanyo seAfrican Union esingokusekwa kwemithetho enokuthenjwa yokukhuseleka kulwaphulo-mthetho lweekhompyutha okanye i-intanethi eAfrika. Esi Sivumelwano sifuna ukuba amazwe asamkelelo esi Sivumelwano aqulunqe umthetho wepalamente okwenza kube lulwaphulo-mthetho ukusasaza izinto eziphehla intiyo yobuhlanga nentiyo yabantu bamanye amazwe. Lo mthetho wepalamente uquka ukwalelwa kokusasazwa kwezinto eziphehla intiyo yobuhlanga nentiyo yabantu bamanye amazwe ngokusebenzisa ikhompyutha okanye unxibelelwano lwe-elektroniki kwakunye nokuphehla ukugonyamelwa komntu okanye iqela labantu ngayo ikhompyutha okanye i-intanethi.
156. ICybercrimes Bill⁶⁷ (uMthetho Oyilwayo woLwaphulo-mthetho ngeekhompyutha Okanye nge-Intanethi) ayithethi nto tu ngentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe (nokunye ukunganyamezelani okuyelele apho) njengokuba yona iPrevention and Combating of Hate Crimes and Hate Speech Bill (ka-2018) isenza. Ushicilelo lwamva lweHate Crimes and Hate Speech Bill luqulethe ukuchazwa kwamagama angokupapashwa, ukusasazwa okanye ukuthethelelwa okanye ukugqithiselwa kwezinto zentetho yentiyo ngeekhompyutha.

⁶⁶ Kuye kwaluqunqwa imithetho yepalamente engqale ulwaphulo-mthetho ngeekhompyutha okanye i-intanethi, njengale ilandelayo: iElectronic Communication and Transactions Act 25 ka-2002, imiGaqo-nkqubo yeZwelonke Yokukhuseleka kuLwaphulo-mthetho ngeekhompyutha Okanye nge-Intanethi ka-2012, iRegulation of Interception of Communications and Provision of Communication-related Information Act ka-2002, neProtection of Personal Information Act ka-2013.

⁶⁷ Bill 6 of 2017

157. Ngaphezu koko, malunga namakhasi onxibelelwano, amazwi asetyenzisiweyo ngoku esiqendu 4(1)(a) achaza ukuba zinto zini ezenza intetho ibe yintetho yentiyo kwaye la mazwi ayenza ibe lulwaphulo-mthetho intetho yentiyo. Ngokwesiqendu 4(1)(b) salo Mthetho Oyilwayo, kusisenzo solwaphulo-mthetho ukusasaza ngabom okanye ukuzenza zifumaneke izinto eziphehla intiyo yobuhlanga usebenzisa unxibelelwano lwe-elektroniki, oko kukuthi, iikhompyutha. Isiqendu 4(1)(c) sithi waphul' umthetho nawuphi na umntu othi ngabom, nangayiphi na indlela, abonise ngezinto eziphehla intiyo okanye azenze zifumaneke naziiphi na izinto eziyintetho yentiyo ezinokuthi zifunyanwe ngumntu othile, okanye zibhekiswe kuye, engumntu ongathathwa njengexhoba lentetho yentiyo.
158. UMthetho Wokukhuselwa Kwintlondi ka-2011⁶⁸ unika amaxhoba entlondi uncedo olusebenzayo olukhusela kwisenzo esinjalo kwaye uza namanyathelo anjongo yawo ikukwenza amacandelo karhulumente achaphazelekayo akuphumelelise ngokupheleleyo okutshiwo ngulo Mthetho. Ngokwalo Mthetho, ukuchazwa kwe-“ntlondi” okukwisiqendu 1 kuquka ukwenza ngokungqalileyo okanye ngokungangqalanga isenzo asaziyo ummangalelwa okanye amele ukusazi ukuba (a) siyamenzakalisa ummangali okanye umntu ohlobene nommangali okanye simenza abe noloyiko lokuba usengenzakaliswa ngokuthi engenasizathu sivakalayo (ii) athethe naye ngomlomo, nge-elektroniki okanye ngenye indlela yonxibelelwano, kungakhathaliseki ukuba ithi ibekho incoko eqhubekayo okanye ayibikho; okanye (iii) ukuthumela, ukuhambisa okanye ukwenza ukuba kuhanjiswa, phakathi kwezinye izinto, i-imeyile. Ukuxhoma izinto ezicaphukisayo kwi-intanethi⁶⁹ nokusongela umntu kwikhompyutha nako kuza neengxaki.

⁶⁸ uMthetho 17 ka-2011

⁶⁹ Zixhonywa kwi-intanethi nakumakhasi onxibelelwano.

ISAPHLUKO 7: IsiCwangciso seZwelonke Sokuthabath' iNyathelo soMzantsi-Afrika Sokulwa iNtiyo yoBuhlanga, uCalulo loBuhlanga, iNtiyo Yabantu Bamanye Amazwe Nokunye Ukunganyamezelani Okuyelele Apho

Ubungakanani Baso Elizweni: Indima yabathabathi-nxaxheba abaphambili ekulweni nasekupheliseni intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho

URhulumente

159. URhulumente unoxanduva lokudala imithetho nemigaqo-nkqubo yokuthintelwa kwentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, ekwanoxanduva lokuwenza asebenze ngempumelelo amanyathelo nezenzo zokuthintela. Ukugcwalisela amanyathelo okunyanzelisa, urhulumente kufuneka andise imigudu yakhe yokuthintela intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho kwimibandela enjengomgaqo-nkqubo wokufudukela kweli, ukusetyenziswa kwamapolisa nokusingathwa kobulungisa nokukhuthazwa kweenkcubeko ezininzi nokungafani kweenkcubeko. Ukuqeqeshwa kwamagosa karhulumente eqeqeshelwa amalungelo oluntu nako kubalulekile.
160. Ngaphezu koko, njengoko kuxeliwe yiKomiti yamaLungelo oQoqosho, Awentlalo naweNkcubeko kumagqabaza ayo angunombolo 21 (2009), la malungelo amthwalisa urhulumente iindidi ezintathu zoxanduva: (a) uxanduva lokuhlonela; (b) uxanduva lokukhusela; (c) noxanduva lokuzalisekisa. Uxanduva lokuhlonela luquka ukuthabatha amanyathelo ajoliswe ekulenzeni lihlonelwe ilungelo lakhe wonk' ubani, engumntu ngamnye okanye ekunye nabanye okanye engaphakathi koluntu okanye iqela labantu, kulilungelo lokuba akhethe ngokukhethekileyo inkcubeko eyeyakhe, abe ngowoluntu oluthile okanye angabi ngowalo, ize loo ndlela akhethe ngayo ihlonelwe. Oku kuquka ilungelo lokungacalulwa ngenxa yenkcubeko yakhe, angabukulwa okanye anganyanzelwa ukuba angene kuluntu oluthile. Okokugqibela, uxanduva lokuzalisekisa lufunisa ukuba amacandelo angurhulumente athabathe amanyathelo afanelekileyo okuqulunq' imithetho, okwenz' izigqibo, okuchophel' amatyala, okwenza ulwabiwo-mali, okukhuthaza, namanye amanyathelo ajoliswe ekuzalisekiseni ngokupheleleyo kwelungelo elimiliselwe kwisiqendu 15, umhlathi 1(a), kwiSivumelwano.⁷⁰
161. Isiqendu 2 seICERD sithi onke amazwe akwesi Sivumelwano makalugxibhe ucalulo lobuhlanga aze azimisele ngazo zonke iindlela nangaphandle kokulibazisa aqale umgaqo-nkqubo wokuphelisa ucalulo lobuhlanga nokuba lukwimo enjani na aze akhuthaze ukuvisisana kwazo zonke iintlanga; ukuze kwenzeke oku: (a) ilizwe ngalinye lizimisela ukuba

⁷⁰E/C.12/GC/21, paras. 48-49. Committee on Economic, Social and Cultural Rights Forty-third session. Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) 2–20 November 2009

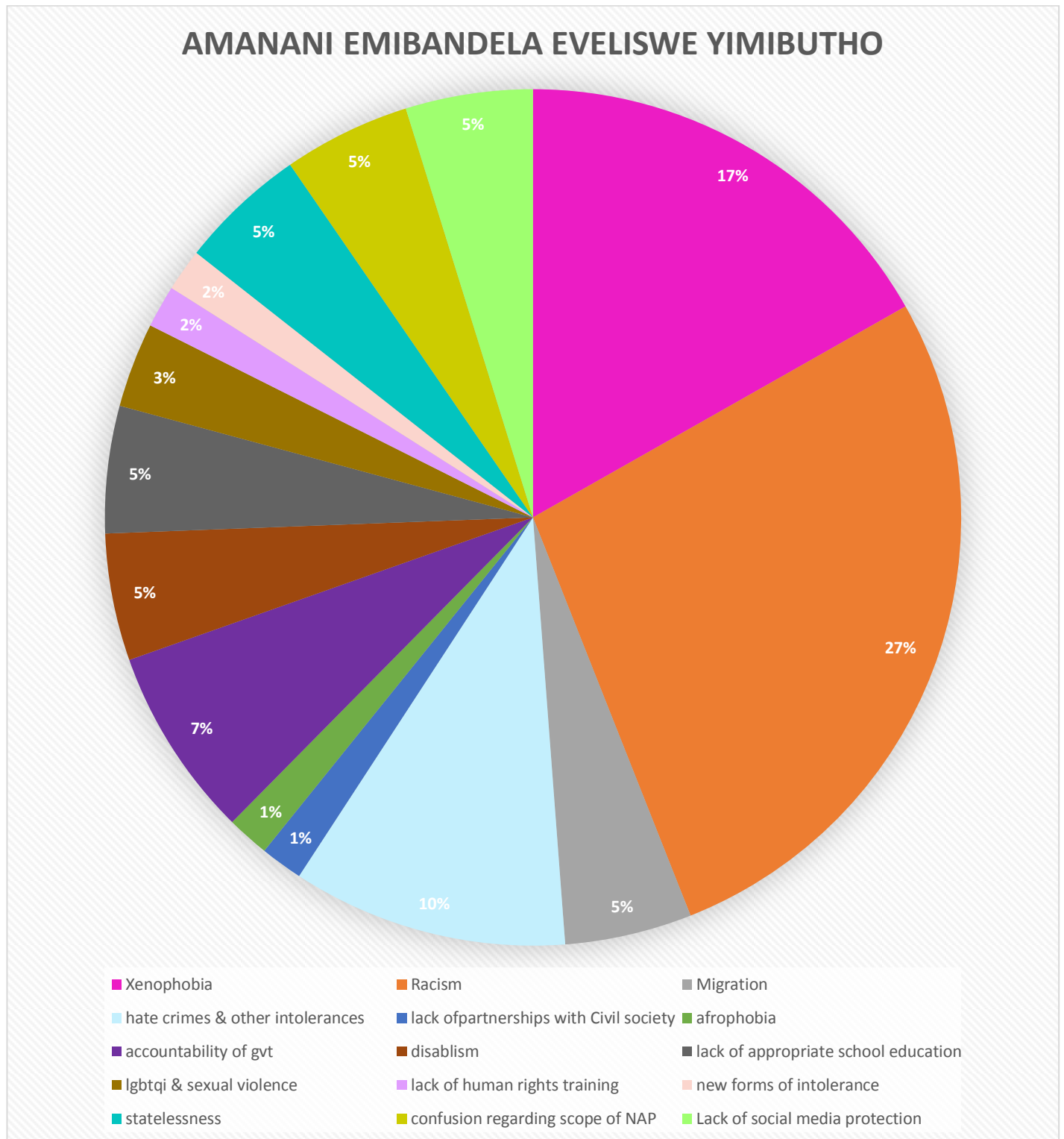
lingabandakanyeki kwisenzo okanye kumkhwa wokucalula ngobuhlanga abantu, amaqela abantu okanye amaqumrhu, kwaye liqinisekisa ukuba abasemagunyeni namaziko kawonkewonke, awelizwe lonke nawasekuhlaleni, enza ngokuvisisana nolu xanduva.⁷¹

Inkqubo yokubonisana

162. Emva kweWCAR neDDPA, kwathatyathwa amanyathelo ahlukahlukeneyo okwenza lula ukuphuhliswa kwesi Sicwangciso. Umbhalo waso oseluvavanyo ongowe-14 wavunywa yiKhabhinethi waza wenziwa wafumaneka kwiwebsayithi yeSebe ukuze abantu bavakalise izimvo ngawo. Kwaboniswa noluntu ngo-2016 kwaza kwafunyanwa izimvo zivela kwijaji neemantyi, kumaqumrhu eSahluko 9 soMgaqo-siseko, kuluntu, kwabemidlalo, kumajelo eendaba, kulutsha, kubasebenzi, kwamanye amaqela abantu anomdla, kwabasebenza kurhulumente nabakumashishini azimeleyo. Kananjalo iSebe loBulungisa liye, ngokusebenzisana namaqabane ngamaqabane nabachaphazelekayo, laqhuba amaphulo amaninzi okwenza abantu bazi, laqhuba iincoko kulo lonke ilizwe gesi Sicwangciso esasiseseluvavanyo, laquka nabantu abaphaya kumanqwanqwa asezantsi eluntwini. Zonke izimvo ezavakaliswayo ziye zathatyathelw' ingqalelo xa bekubhalwa umbhalo wokugqibela wesi siCwangciso.
163. ISebe loBulungisa liye labonisana namaphondo KwaZulu-Natal, eRhawutini, eMntla-Ntshona, eMpumalanga, eMntla-Koloni, eFreyistata, eMpuma-Koloni, eNtshona-Koloni naseLimpopo ngo-2016. Umbhalo oseluvavanyo wesi siCwangciso uye wenziwa wafumaneka kananjalo kuwo onke amaZiko eNkonzo aseThusong nakwiiOfisi zeeNgingqi zeSebe loBulungisa noPhuhliso loMgaqo-siseko, baza bonke abachaphazelekayo noluntu ngokubanzi bancelwa ukuba bangenise izimvo zabo kwidilesi ethi: nap@justice.gov.za
164. Kwafunyanwa izimvo ezili-152 sezizonke zivela kubantu abali-104, ezingama-47 zivela kwimibutho, kumaqela ngamaqela anomdla nakumaqumrhu eSahluko 9 soMgaqo-siseko. Zacutyungulwa izimvo ezifunyenweyo, kunye nezimvo ezafunyanwa zivela ekubonisaneni namaphondo, zaba sisiseko sengxelo efun' unobangela.

⁷¹ UNOHCHR (1965). International Convention on the Elimination of All Forms of Racial Discrimination

165. **Umfanekiso 1** wahlula-hlula imibandela ngemibandela eveliswe yimibutho eyahlukeneyo:



TRANSLATION OF THE COLOURFUL BULLETS BELOW THE CIRCLE ABOVE

Xenophobia = intiyo yobuhlanga

Hate crimes & other intolerances = ulwaphulo-mthetho lwentiyo nokunye ukunganyamezelani

Accountability of govt = ukuphendula kukarhulumente

Igbtqi & sexual violence = abambaxa ngesini nokugonyamelwa kwabasisini esithile

Statelessness = ukungabi nalizwe

Racism = intiyo yobuhlanga

Lack of human rights training = ukungafundiswa ngamalungelo oluntu

Lack of partnerships with civil society = ukungabi nabuqabane noluntu

Disablism = ukuba nesiphene

Confusion regarding scope of NAP = ukungaqondi ukuba sihamba sifike phi esi siCwangciso

Migration = ukufuduka

Afrophobia = ukucaphukela abantu baseAfrika

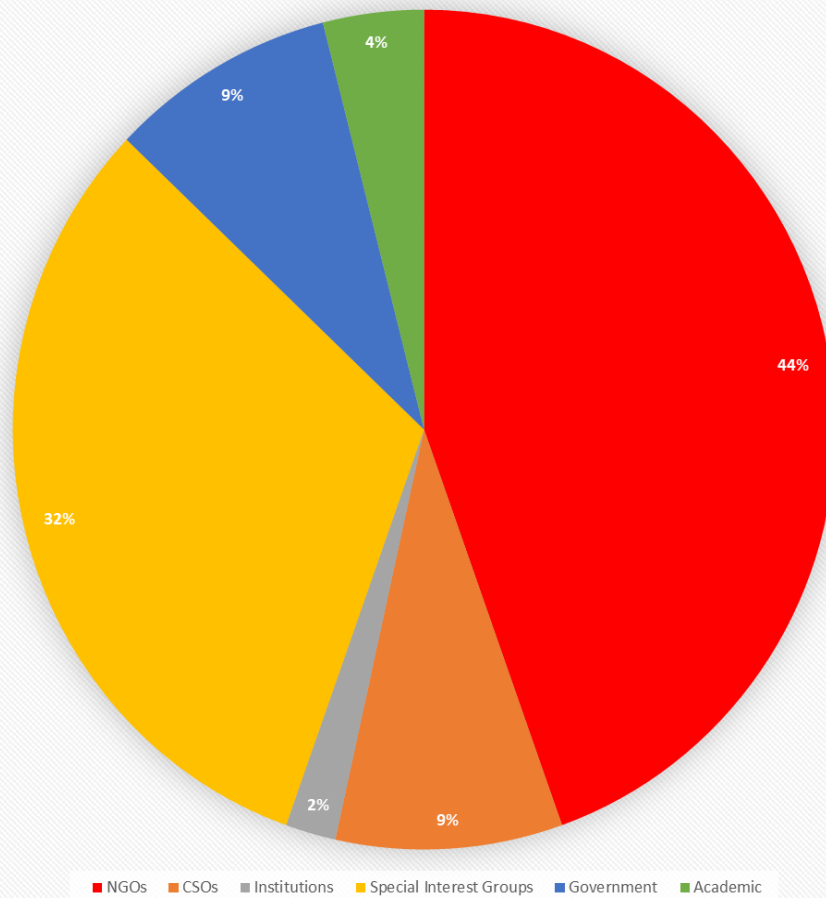
Lack of appropriate school education = ukungabikho kwemfundo efanelekileyo yasesikolweni

New forms of intolerance = iindlela ezintsha zokunganyamezelani

Lack of social media protection = ukungakhuselwa kwamakhasi onxibelelwano

166. **Umfanekiso 2** ubonisa amanani avela kwiqela ngalinye elingumbutho

Statistics from each organisational group



TRANSLATION OF THE ABOVE CHART

Statistics from each organisational group = amanani avela kwiqela ngalinye lombutho

NGOs = imibutho engengokarhulumente

CSO = imibutho yoluntu

Institutions = amaziko

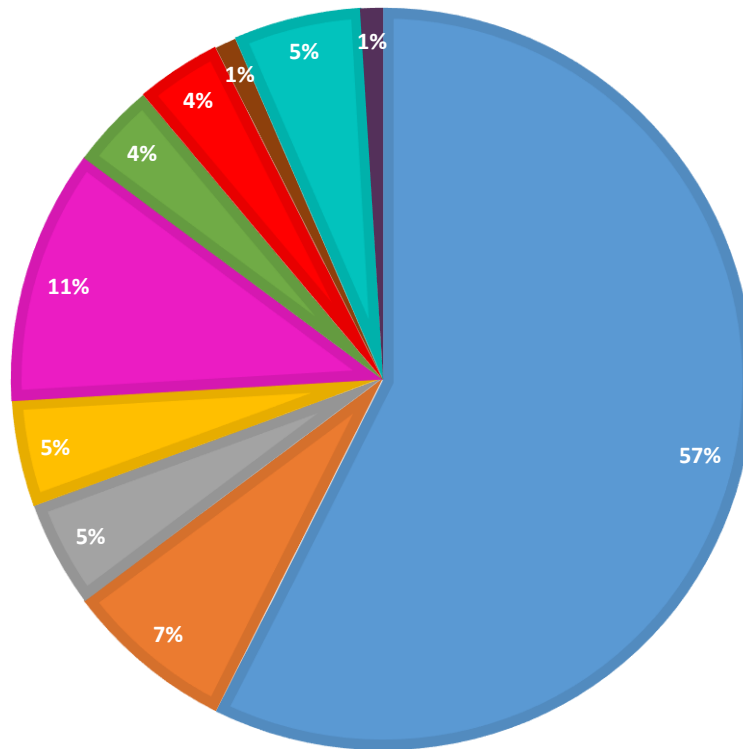
Special Interest Groups = Amaqela Omdla Othile

Government = uRhulumente

Academic = abahloholi

167. **Umfanekiso 3** wahlula-hlula ubungakanani bemibandela eveliswe ngumntu ngamnye:

PERCENTAGE OF ISSUES RAISED BY INDIVIDUALS



TRANSLATION OF THE ABOVE:

PERCENTAGE OF ISSUES RAISED BY INDIVIDUALS = AMANANI EMIBANDELA EVEZWE NGABANTU

RACISM = INTIYO YOBUHLANGA

HATE CRIMES & OTHER INTOLERANCES = ULWAPHULO-MTHETHO LWENTIYO NOKUNYE UKUNGANYAMEZELANI

ACCOUNTABILITY OF GOVT = UKUPHENDULA KUKARHULUMENTE

LGBTQI & GBV = ABAMBAXA NGESINI NOKUGONYAMELWA KWABESINI ESITHILE

NEW FORMS OF INTOLERANCES = IINDLELA EZINTSHA ZOKUNGANYAMEZELANI

XENOPHOBIA = INTIYO YOBUHLANGA

PARTNERSHIP WITH CIVIL SOCIETY = UBUQABANE NOLUNTU

NEED FOR LEARNING PROGRAMMES IN SCHOOLS = IMFUNEKO YEENKQUBO ZOKUFUNDA EZIKOLWENI

HUMAN RIGHTS TRAINING = UKUFUNDISWA NGAMALUNGELO OLUNTU

AFROPHOBIA = UKUCATSHUKELWA KWABANTU BASE-AFRIKA

Abantu ngabanye noluntu: (kwiibhokisi, kungekhona kumabali)

- “Ndilusizi gqitha ukufumanisa ukuba ngo-2016 igama elisetyenziswa ngabeSuthu, mhlawumbi nangabanye abantu, xa bethetha ngomntu ongumIndiya eMzantsi-Afrika, bathi “amakula”. Ndibuze abantu abambalwa abasebenzisa eli gama, ndaxelelwa ukuba ligama “eliqhelekileyo elisetyenziswa” qho. Lisuka kwigama elithi “coolie”, ekwakuligama elingathandekiyo nelingathandekiyo unangoku, kanye njengokuba igama eliqala ngo-“k” kuligama elingathandekiyo elisuka kwigama lesiArabhu”

- “Ndifuna ukongeza ngelithi ubuhlanga abukho zikolweni kuphela nakwabamhlophe. Nabantsundu banabo. Ndingumntu omkhulu; andizuyixela iminyaka yam yobudala; ndingumZulu waseKZN; kodwa ngoku ndihlala eRhawutini. Imanejala yam ngumntu ontsundu waseMpuma-Koloni. Wathi kum ndingabokuza ndithwele iqhiya emsebenzini. Ndaqala ndacinga ukuba uyaqhula. Waphinda okwesibini endikhombe entloko . . . “Andizuthetha nawe uthwele le qhiya. Ndinabantwana aba-3, ndingaphaya kwama-44 eminyaka”

- “. . . Ndandifunda kwisikolo samabanga aphezulu kulaa minyaka . . . zingekabikho izoluli-zinwele ezi. Kodwa sasicocokile singamahomba sinxiba nakakuhle. Inkangeleko yethu yayiyeyabantwana besikolo, indlela esasinxiba ngayo yayiyeyabantwana besikolo; esikwenzayo sasikwenza okwababantwana besikolo, nokuziphatha kwethu kwakungenachaphaza. Sasizihlonela iititshala zethu, sizimisela ezifundweni. Saya kwizikolo zokuqeqeshelwa ubutitshala ngo-76, senza esasifanele sikwenze. Saphuma apho siphekiwe. Abantwana ePitoli abakami; iinwele zabo ngathi yindlu yentaka. Kodwa bayibiza ubuhlanga”

- “Iindlela zokunceda ezinjengeendibano zokuchubelan’ ulwazi, nokufunda iilwimi zomthonyama, njalo-njalo, azisoze zibuphelise ubuhlanga. Kodwa cinga xa kunokwenziwa kube sisenzo solwaphulo-mthetho esinesohlwayo, abantu baza kuqale bacinge NGAPHAMBI kokuba benze okanye bathethe ngendlela enobuhlanga. Ukulungisa indlela ephosakeleyo abacinga ngayo abantu ngokubafundisa izifundo ezingokungafani kwabantu kuya kunceda nje kuphelele esithubeni. Kodwa makwenziwe kube sisenzo ESINESOHLWAYO, ndiyakuqinisekisa, baza kutsho bayeke abanobuhlanga .”

- “Ingcamango yokuzama ukuqonda ukuba abantu baseMzantsi-Afrika bayenzile kusini na inkqubela ekudluliseleni “ubutyebi” busuke kwabamhlophe buye kwabantsundu, ayithandeki noko, kodwa ingaphezu koko — kuyindlela engachananga ukusebenzisa le ndlela ukuqonda ukuba iintsalela zokwahlulwa-hlulwa kweentlanga zisasele kusini na, bekungakuhle kube sisicwangciso sokuthath’ inyathelo esitshoyo.”

- “ukohlwaya abamhlophe ngokungabaqeshi, ngokungabavumeli badlalele iqela lesizwe, ukubalela ukuba babe nezabelo kushishino lwezabelo lwabantsundu kuphela, ukuqesha abantsundu kuqala kunabamhlophe ngenxa nje yokuba ufuna ukuzalisa inani elifunekayo labantsundu abe umntu omhlophe ewufanelekela ngaphezu komntu ontsundu loo msebenzi, oko nako ngokwako kuyintyo yobuhlanga nokucalula. Oku akuyi kululungisa uqoqosho yaye eneneni akunako ukululungisa. Oku akuyi kukwenza kulingane ukungalingani okukhoyo entlalweni nakuqoqosho”

- “Abantu bomthonyama abangamaKhoi nabangamaSan abakavunywa ngokoMgaqo-siseko njengabantu abakhoyo; ngoko ke basabizwa ngokuthi ngabantu “bebala” ekuyindlela ababebizwa ngayo ekwahlulwa-hlulweni kwangaphambili kweentlanga ngokweentlanga nezizwe phantsi kobukoloniwali okanye phantsi kokwahlulwa-hlulwa kweentlanga. Thina, NKC, sibe negalelo elikhulu kakhulu kwiTraditional and Khoi and San Leadership Bill (uMthetho Oyilwayo wobuNkokeli boMthonyama bamaKhoi namaSan), othiwe thaca ePalamente kungokunje, nangona uye wabambezeleka ixesha elingaphezu kwe-17 leminyaka. Oku kubangele ukuba kukhutshelwe ngaphandle ngokobuhlanga iqela labantu abachazwa ngokuthi “bazisisulu”. Ukukhutshelwa ngaphandle kwamKhoi namaSan, ilifa lethu, imbali yethu, ulwimi lwethu, nenkcubeko yethu kube negalelo kakhulu ekunganyamezelanini, kwintyo yobuhlanga nakucalulo lobuhlanga nxamnye neqela labantu abachazwa yimithetho yepalamente njengabacinezweyo nabohluthwe isidima sokuba ngumntu waseAfrika ngendlela ekhohlakele kangangokuba namhlanje intiyo yobuhlanga phakathi kwamaKhoi namaSan yendele nzulu ngenxa nje yokuba sisachazwa njengento endaweni yokuchazwa ngokokuthi singoobani nangokuthi siyintoni Kanye-kanye ngenene”

- “Ndicinga ukuba intiyo yobuhlanga ingaphezu koku. ‘Ukugxininiswa kokuphakama okusekelwe kwizinto esingafani ngazo ezingenakuncedwa mntu” akuyiyo into engayo intiyo yobuhlanga. Oku kukutolika phosakeleyo iindlela zokwenza zikaKant neenjongo zakhe ekugqibeleni. Umntu akachazwa ngokobukrelekrele bakhe, ngokomzimba wakhe okanye ngokwenkcubeko yakhe, koko ngokuthi usisidalwa esingumntu, okanye ke xa sithetha ngokwemfundiso yobuKristu, wenziwe ngokomfanekiso kaThixo. Enye yezi ndlela zimbini zokuchaza umntu yanele. Ukumbandeza Ubuntu bakhe umntu yeyona ngxam yentiyo yobuhlanga”

- “Qala ngamagosa uwaqeqeshele: ukuphendula iimfonomfono ngoko nangoko. Xa ufika eofisini yakho, qalisa ukusebenza uze uqhubeke usebenza ngexesha leeyure zomsebenzi, ungayilileki, uyeke nokutya phambi kwabantu obakhonzayo, phambi kwabantu abaze kufuna igwiba nabaziimbacu. Musa ukuthetha ngomlomo ogcwele umthamo xa uthetha nabantu obakhonzayo, nabaze kufuna igwiba okanye nabaziimbacu”

Amaqumrhu eSahluko 9 soMgaqo-siseko

168. ISahluko 9 soMgaqo-siseko simisela amaqumrhu aliqela azimeleyo anjongo yawo ikukomeleza intando yesininzi yoMgaqo-siseko eMzantsi-Afrika ngokukhuthaza kanobom ukuhlonelwa kwamalungelo oluntu nokukhuselwa kwawo, ukuphuhliswa kwawo nokufezekiswa kwawo, kuquka nokubek’ esweni nokuphononongwa kokwenziwa kwawo asebenze. Amaqumrhu eSahluko 9 ngokuhambisana nemigaqo⁷² engobume bamaqumrhu elizwe okukhuthazwa nokukhuselwa kwamalungelo oluntu anomsebenzi obalulekileyo amakawenze malunga nokuthintelwa nokukhuselwa kwamalungelo oluntu, kuquka intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho. Ngakumbi nangakumbi anokudlala indima ekuqubisaneni nezi zinto zilandelayo:

- ukunceda amaxhoba okuphathwa ngokungafaniyo nabanye kwizikhalazo zawo
- ukuphanda ukuphathwa kwabantu ngokungafaniyo
- ukupapasha iingxelo ngokuphathwa kwabantu ngokungafaniyo
- ukwenza izindululo ngendlela yokulwa ukuphathwa ngendlela engafaniyo
- ukukhuthaza ukukhuselwa, ukuphuhliswa nokuzuzwa kwamalungelo oluntu elizweni.

169. Kujongwe ukuba amaqumrhu eSahluko 9 ngawo ikakhulu aya kudlala indima ebalulekileyo ekubekweni esweni nasekuphononongweni kwesi siCwangciso.

⁷² UN General Assembly Resolution 48/134 of 20 December 1993

Uluntu

170. Uluntu ludlala indawo ebalulekileyo ekufezekisweni ngokuqhubekayo kwamalungelo oluntu nasekwenzeni uluntu lube lolwentando yesininzi. IDurban Declaration yakuvuma ukubaluleka kwendima nokubandakanyeka koluntu ekulweni nentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho. Uluntu lunendima eyimfuneko omaluyidlale ngokwenza ukuba urhulumente aphenhule. Ngaphezu koko, amaqela aseluntwini aye afumba amava amaninzi nobucisa ekusebenzeni namaxhoba entiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho.
171. Urhulumente waseMzantsi-Afrika uye wabuqinisekisa ubudlelane bakhe noluntu ekuqinisekiseni uphuhliso nolawulo olulungileyo.
172. Ukuntsonkotha nokuba ntlantluninzi kwentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho kufuna ubucisa beendidi ngeendidi olunokuthi uluntu luze nabo. Abantu abasebenza eluntwini bangaba negalelo kuphando nasekucutyungulweni kwemigaqo-nkqubo ngokuqokelela ingcombolo efanelekileyo nangokubona indlela ezenzeka ngayo izinto kwentiyo yobuhlanga, ucalulo lobuhlanga, kwentiyo yabantu bamanye amazwe nakokunye ukunganyamezelaneni okuyelele apho, baze benze imisebenzi yokwenza abantu bazi. Abantu abasebenza eluntwini bangundoqo ekuthinteleni nasekulweni intiyo yobuhlanga yaye kufuneka babe ngamaqabane norhulumente ekwenzeni njalo.

Amashishini azimeleyo

173. Esi siCwangciso sisebenza phakathi kukarhulumente nabantu naphakathi kwabantu nabanye abantu, ngaloo ndlela sisebenza nakumashishini azimeleyo. Amathuba oshishino ayaqhubeka efumaneka ngokuthi ululuphi uhlanga, usesiphi isini, ungowayiphi indawo, ungowaluphi udidi eluntwini, nangokuthi unayiphi imvelaphi. Amashishini azimeleyo kufuneka abonise ukuzinkqamangela ekuhloneleni amalungelo oluntu asisiseko aze abonise ukungakhethi luhlanga kwimibandela yengqesho. Oku kufanele kubonise inguqu enenkathalo kuze kuvelise iingxaki ezisenokuba zisisithintelo ngenene kuwo ekubeni nabasebenzi abangokweentlanga zeli lizwe, nanjengoko amashishini azimeleyo enze inkqubela encinane kakhulu malunga noku. Amashishini azimeleyo kufuneka afumanise ukuba amashishini ahlukeneyo angayidlala njani indima ekuqubisaneni nemibandela esisiseko ebangela iingxaki ezinjengobuhlwempu nokungabi namfundo. Amashishini alicandelo elidla ngokulityalwa xa kukho iingxoxo ezimalunga namalungelo oluntu.

Icandelo labasebenzi

174. Icandelo labasebenzi kufuneka libandakanyeke ngenkuthalo kumaphulo aliqela okuphuhliswa koluntu aquka, phakathi kwamanye, ukwenza abantu bazi ngakumbi ngokuchaswa kwentiyo yobuhlanga nocalulo lobuhlanga, intiyo yabantu bamanye amazwe

nokunye ukunganyamezelani okuyelele apho kwiindawo zempangelo, ukwenza abantu bazi ngakumbi ngokuphangeliswa kwabantwana nokukubek' esweni, ngokukhuthazwa kokulingana kwamadoda nabafazi, ngokufundisa nokuqeqesha amalungu emibutho yabasebenzi, ngokukhuthaza ukuziphendulela kukarhulumente ekulweni urhwaphilizo. Icandelo labasebenzi, ngoNEDLAC osisakhiwo esiyimfuneko sokubonisana phakathi kukarhulumente nabasebenzi, kuye kwaboniswa nalo kwaye kuseza kuboniswa nalo kwakhona kwiingxoxo ezingemigaqo-nkqubo emalunga nentiyo yobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho.

Amajelo eendaba

175. Isiqendu 16(1) soMgaqo-siseko siqinisekisa ukuba wonk' ubani unelungelo lenkululeko yokuthetha, eliquka, phakathi kwezinye izinto, ilungelo lenkululeko yamaphephandaba namanye amajelo eendaba kwakunye nenkululeko yemfundo. Noko ke, isiqendu 16(2) sithi la malungelo awaquki "ukuphemb' imfazwe; ukuthundeza abanye ukwenz' ugonyamelo olukhawulezileyo; okanye ukukhuthaza intiyo esekelwe kubuhlanga, ubuzwe, ubuni okanye unqulo, nekhuthaza ukwenzakalisa". Ngamafuphi, intetho yentiyo ayiyontetho ekukho inkululeko yayo.
176. Amajelo eendaba adlala indima ebalulekileyo ekwakhiweni kwesizwe nasekwakheni ukungacaluli ngohlanga nangesini. Akwadlala idima ekwakheni uluntu olunolwazi, olufundisiweyo nolunezimvo nasekwenzeni urhulumente aphenhle. Njengoko kuxeliwe kwiDurban Declaration, ukusetyenziswa kwelungelo lenkululeko yokuthetha, ngakumbi ukusetyenziswa kwalo ngamajelo eendaba, kunokuba negalelo elihle ekulweni nentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho.⁷³ Oku kubalulekile ukuze intando yesininzi isebenze.
177. Esi siCwangciso siyavuma ukuba ukufumana ingcombolo ngamaphephandaba, ngosasazo nange-intanethi kubalulekile ukuze abemi belizwe babe nolwazi kwaye bakhuthale. Kukwaligalelo kwimfundo nakuphuhliso loqoqosho. IBhunga lamaPhephandaba lililiso kwiwebsayithi zamalungu alo kwaye imigqaliselo yalo ayikufuni ukuthethwa kwentetho yentiyo nentiyo yobuhlanga. Iworld Editor's Forum ikhuthaza ukusetyenziswa kwendlela yokwenza esekelwe ekukhuthazeni ingxoxo eluncedo nethintela ukuxhatshazwa.
178. Ukuzimela geqe kwamaziko angamajelo eendaba namaqumrhu alawula la maziko, aquka iSouth African Broadcasting Corporation, neIndependent Communications Authority of South Africa, nePress Council of South Africa, neAdvertising Standards Authority, kufuneka akhuselwe.⁷⁴ Noko ke, ukungafani kwezinto ngezinto ezibikwa ngamajelo eendaba kubonisa ukungafani kumagumbi eendaba nakwiinkampani zamajelo eendaba. Mayela noku amaqumrhu amajelo eendaba azilawula ngokwawo nawo anokudlala indima entle equka

⁷³ Ingxelo yoMniki-ngxelo Okhethekileyo ngeentlobo zale mihla zentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho, Mutuma Ruteree. IBhunga lamaLungelo oLuntu, iseshoni yama-20, ingongoma kwi-ajenda engunombolo 9, 15 Meyi 2012

http://www.ohchr.org/Documents/Issues/Racism/A.HRC.20.33_en.pdf

⁷⁴ isiCwangciso soPhuhliso seZwelonke: uMbono esinawo ngo-2030. "Ukuguqula uLuntu Nokumanya iLizwe." ISahluko 15. P8

<http://www.gov.za/documents/national-development-plan-vision-2030>

ukuncedisa ekwakheni ngokutsha amajelo eendaba ahlukeni phakathi ngokobuhlanga nagokobuzwe, ngokusebenzisa amanyathelo anjengemigqaliselo yokuziphatha enokunyanzeliswa okanye yokuzithandela. Ukuzilawula kwabaniki-nkonzo ye-intanethi kumele kukhuthazwe.

179. Amajelo eendaba akhuthazwa ukuba abe nendima ayidlalayo ekulweni intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyelele apho, ikwenze oku ngokuzibika iziganeko ezinento yokwenza nentiyo yobuhlanga, nentiyo yabantu bamanye amazwe nokucalulwa ngesini, aze athi gqi namaphulo okwenza abantu bazi ukuze bavakalelwe xa zisenzeka ezi zinto.
180. Amajelo eendaba kuza kuboniswa nawo kananjalo ngokuba neengxoxo nezakhiwo namaqumrhu ahlukeneyo amela iindidi ezahlukeneyo zamajelo eendaba neenkampani zamajelo eendaba elizweni. Phakathi kwabanye, oku kuza kuquka iSouth African Broadcasting Corporation, i-Independent Communications Authority of South Africa, iPress Council of South Africa neSANEF. Amajelo eendaba, njengamanye amaqela achaphazelekayo, aye anikwa ithuba lokuba avakalise izimvo ngombhalo oseluvavanyo wesi siCwangciso xa bekuqhubeka inkqubo yokubonisana noluntu.

Izifundiswa zeeyunivesithi

181. Amaziko emfundo aziiyunivesithi adla ngokuphala phambili ekudaleni inguqu eluntwini. La maziko aza kucelwa ukuba enze ingxelo unyaka ngamnye kwizakhiwo zolawulo zesi siCwangciso ebika ngeziganeko zentiyo yobuhlanga, ngocalulo lobuhlanga nangokunye ukunganyamezelani okuyelele apho, abike nangamanyathelo athatyathiweyo ukuqubisana nazo.

Amaqumrhu emidlalo

182. Imidlalo inamandla okumanya abantu — okanye okubahlula. Intiyo yobuhlanga ikho kwimidlalo, hayi eMzantsi-Afrika kuphela, koko ehlabathini liphela. Umbutho oyiSports and Recreation South Africa kuza kuba ngumsebenzi wawo ukufumana ingcombolo kwimibutho ngemibutho yemidlalo yakweli lizwe, kuyingcombolo engeziganeko zentiyo yobuhlanga, ucalulo lobuhlanga nokunye ukunganyamezelani okuyelele apho, nangamanyathelo athatyathiweyo okusiphula intiyo yobuhlanga kumabala emidlalo.

ISAHLUKO 8: AMANYATHELO

183. Indima karhulumente malunga namalungelo oluntu ikathathu: **ukuwakhuthaza nokuwakhusela** amalungelo oluntu kunye **nokuthintela** ukunyhashwa kwawo — okanye xa siyibeka ngenye indlela, ukutshutshisa, ukukhusela, nokuthintela. Isiqendu 7(2) soMgaqo-siseko sinkqamangela urhulumente ngokucacileyo ukuba “makawahlonele, awakhusele, awakhuthaze kwaye awafezekise amalungelo akuMqulu wamaLungelo”.
184. OoRhulumente bathabatha iimbopheleleko noxanduva ngokomthetho wamazwe ngamazwe ukuba bawahlonele, bawakhusele kwaye bawafezekise amalungelo oluntu abo bonke abantu abahlala kumhlaba wabo, bengacaluli nangayiphi na indlela.⁷⁵ Ngaphezu koko, “oorhulumente, kuquka nawo onke amasebe abo, banoxanduva oluphambili lokukhuthaza nokukhusela onke amalungelo oluntu, kuquka nokuthintela ukunyhashwa kwawo”.⁷⁶ Iimbopheleleko abanazo ooRhulumente ziquka uxanduva lokukhusela abantu ekunyhashweni kwamalungelo abo ngabanye abantu, okuquka abantu abangengorhulumente.⁷⁷ OoRhulumente basenokuba netyala lokwenza ngokunxamnye neembopheleleko zabo zomthetho wamazwe ngamazwe wamalungelo oluntu xa besilela ukuthabatha amanyathelo afanelekileyo okuthintela, ukuphanda, ukohlwaya nokwenza imbuyekezo ekunyhashweni kwamalungelo ngabantu abangengorhulumente.⁷⁸
185. Izikhokelo zesiCwangciso Sokuthabath’ iNyathelo saseUnited States zicebisa ukuba kubekho isakhiwo esisekelwe kwimfuneko yokumisela iinjongo ezithile nezenzo, kwakunye nokubaluleka kokwenza isigqibo ngamaqumrhu anoxanduva kaRhulumente, imihla emakube sekugqityiwe ngayo nezinto ezibonisa okufeziweyo. Esi siCwangciso sibonisa ngokucacileyo iinjongo zikaRhulumente ekuzabalazeni kwakhe ngokuchasene nocalulo. Sixela amanyathelo nezinto ezibonisa okufeziweyo ngokuhamba kwexesha ekuya kufuneka ukuba ziphunyezwe. Amanyathelo nezinto ezibonisa okufeziweyo ezixelwe kwesi sicwangciso ziluncedo kwabo basebenzisa esi sicwangciso kwaye zisisikhokelo kuluntu ngokubanzi.
186. Ukuze kuhlangatyezwane nezi mfuneko, amanyathelo acetywayo nezinto ezibonisa okufeziweyo zixelwe apha ngezantsi. Malixininiswe elokuba la manyathelo akazimelanga odwa, koko kufuneka ajongwe kucingwa ngemigaqo-nkqubo ekhoyo, ngezicwangciso ezikhoyo nangeendlela zoncedo.
187. ISebe loBulungisa liza kuqhuba **uhlolisiso oluza kuba sisiseko** sokulinganisa uphuculo olwenziweyo elizweni emva kokusetyenziswa kwesi siCwangciso. Lugqithela ngaphaya

⁷⁵ Isiqendu 2, se-International Covenant on Civil and Political Rights and the Human Rights Committee’s General Comment 31 (2004); isiqendu 2 seConvention on the Rights of the Child and the Convention on the Rights of the Child’s General Comment 5 (2003).

⁷⁶ A/HRC/RES/24/16, isiqendu 2. I-Inter-American Court of Human Rights has yathi ooRhulumente “banyanzelekile ngokomthetho ukuba bathabathe amanyathelo afanelekileyo ukuthintela ukunyhashwa kwamalungelo oluntu” (*Velasquez Rodriguez v. Honduras*, 29 Julayi 1988). E. Decaux and S. Touzé, *La Prévention des Violations des Droits de l’Homme* (Paris, Editions A. Pedone, 2015).

⁷⁷ Funda i-Human Rights Committee General Comment 31, isiqendu 8 neCommunication No. 195/1985, *Delgado Paez v. Colombia*, iimbono ezamkelwa ngowe-12 kuJulayi 1990; iConvention on the Elimination of All Forms of Discrimination against Women General Recommendations 19 no-28. I-European Court of Human Rights ithe kusengafakwa amabango kuRhulumente xa amapolisa esilela ukukhusela abantu ekunyhashweni kwamalungelo abo ngabanye abantu (*Osman v. United Kingdom* (Appl. No. 87/1997/871/1083), isigqibo senkundla somhla wama-28 kuOktobha 1998).

⁷⁸ Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (annex of A/HRC/17/31), eyamkelwa yiHuman Rights Council Resolution 17/4.

kwemibandela ecingelwayo. Luza kusetyenziselwa ukwenza izindululo ngeemfuneko zokukhuselwa kwabantu abazisisulu nabangajongelwa ntweni. Uhlolisiso luza kucingela imithetho ekhoyo, imigaqo-nkqubo, izicwangciso, imisebenzi, iimfuno nobuncwane obungabantu nobungamaziko bokuphelisa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyebelele apho.

188. linkcukacha-manani ezithe saa ziza kuqokelelwa ngenjongo yokuqonda—

- indlela ezenzekayo ngayo izinto kwintyo yobuhlanga;
- izithintelo emazoyiswe ekuphelisweni kwintyo yobuhlanga nocalulo, kunikelwa ingqalelo ikakhulu kwiintlobo zangoku ezithi gqi zocalulo lobuhlanga;
- ukufunyanwa kobulungisa ngamakhoba ocalulo lobuhlanga;
- izicwangciso zokulwa ucalulo lobuhlanga;
- ulwazi ngokwalelwa kocalulo lobuhlanga phakathi koluntu ngokubanzi naphakathi kwabantu abasenokuba ngamakhoba;
- ukubhebhethekiswa kocalulo lobuhlanga ngamajelo eendaba jikelele (aquka umabonakude, unomathotholo, i-intanethi, amaphephandaba neemagazini);
- indlela izifundo eziyomeleza ngayo imigaqo yokulingana nokungacaluli kuwo onke amanqanaba emfundo;
- nokufumaneka kwamaxwebhu abalulekileyo amalungelo oluntu nezinye izinto ezikhusela ukulingana nokungacaluli ngeelwimi zelizwe lonke nezasekuhlaleni kwanakwimo eyenziwe lula.

189. Phantsi kobunkokeli besakhiwo sezwelonke sonxibelelwaniso, iSebe loBulungisa liza kuthi gqi nobuxhakaxhaka neSilumkiso Saphambi Kwexesha esinxityelelaniswe ne**Cebo Lokusabela Ngokukhawuleza** eliqaliswe liSebe loBulungisa. Kananjalo iSebe loBulungisa liza kuqinisekisa ukuba ingcombolo echanileyo neenkukacha-manani ziyaqokelelwa zize zipapashwe kwinani lezenzo zolwaphulo-mthetho zentiyo yobuhlanga nentiyo yabantu bamanye amazwe ezibikwa emapoliseni, kwinani lamatyala athi atshutshiswe, nakwizizathu zokungatshutshisi nakwisiphumo samatyala atshutshisiweyo.

190. Lisebenzisana namasebe karhulumente namaqumrhu eSahluko 9 soMgaqo-siseko noMbutho wamaLungelo oLuntu noluntu ngokubanzi, iSebe loBulungisa liza kuthi **novimba wengcombolo onamagama abaniki-nkonzo** abanika uncedo kule mibandela oya kuthi anxityelelaniswe neCebo Lokukhawuleza Ngokukhawuleza.

191. ISebe loBulungisa liza kukhuthaza **iindlela ezichuliweyo zokwenza uphando** eziya kuquka ukuphandwa kobunjani bentiyo yobuhlanga nocalulo, oonobangela bayo neendlela ezibonakalisa ngayo kokubini esidlangalaleni nangasese, kwakunye neendlela eziphumelelayo zokuqinisekisa ukuba ingcombolo neenkukacha-manani ziyaqokelelwa.

192. Ukukhuthazwa **kwemfundo yokuchasa intiyo yobuhlanga nokuchasa ucalulo** luxanduva omaluthwalwe ngamasebe karhulumente ekunye namaqumrhu eSahluko 9 soMgaqo-siseko. Phantsi kokonganyelwa sesi siCwangciso, iSebe loBulungisa liya kuthi likhuthaze amasebo achuliweyo antlantluninzi okufundisa abantu engawamasebe karhulumente kwakunye namanyathelo athatyathwe ngawo okulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyebele apho.
193. ISebe loBulungisa liza kuthi gqi nemfundo **nezicwangciso zoqeqesho** likunye namanye amasebe karhulumente, namaqumrhu eSahluko 9 soMgaqo-siseko kwakunye noluntu ukwenza abantu bazi ngakumbi ngentiyo yobuhlanga, ngokulingana nangemibandela yokuchaswa kocalulo phakathi kwamagosa karhulumente noluntu ngokubanzi, lukhuthaza inkxaso evela kwiingcaphephe ngeengcaphephe.
194. La manyathelo asengaquka izicwangciso ezidibanisa imigudu yezwelonke nentsebenziswano nabanye abachaphazelekayo, ukukhuthaza ukusetyenziswa kotyalo-mali olungelolukarhulumente kuboniswa noluntu lwemimandla oluchaphazelekileyo ukuze kupheliswe ubuhlwempu, ngakumbi kuloo mimandla ahlala kuyo kakhulu amakhoba ocalulo lobuhlanga. Amashishini azimeleyo kukwafuneka acinge ngokuba negalelo kuphengululo ukuze kuphandwe ubunjani, oonobangela neendlela oluzibonakalisa ngazo ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyebele apho.
195. Izenzo emazithatyathwe ziye zacingisiswa kusetyenziswa indlela esetyenziswe kwiMedium Term Strategic Framework yaye ke ngoko zifanele zancedise ekwenzeni yonke into ivumelane neMTSF nesi siCwangciso.

Izenzo	Uxanduva lokukhokela (* inkwenkwezi le ithetha isiCwangciso Sokusebenza – esisengatshintsha xa kufumaneka izigunyaziso ezitsha emva kovoto luka- 2019)	Izinto ezenziwayo neziphumo	Imida yexesha: 2019- 2024 (ngokwesiCwangciso sokusebenzisa)
1. Uhlolisiso olusisiseko	iSebe loBulungisa	<p>1. kwenziwe uhlolisiso olusisiseko lokuqonda amanqanaba entiyo yobuhlanga, intiyo yabantu bamanye amazwe, ucalulo ngokuthi umntu uthandana nabantu besini esinjani, ngokuthi usesiphi isini nokuthi uzibonakalisa ebantwini esesiphi isini, iziganeko zobuhlanga, ubudlelane phakathi kweentlanga ngeentlanga, neendlela obuqondwa ngayo ubumi bomntu.</p> <p>2. Ukudityaniswa kweengxelo ezimalunga nemithetho yangoku, imigaqo-nkqubo, izicwangciso, iimfuno nobuncwane obungabantu nobungamaziko obuyimfuneko ukuze kupheliswe intiyo yobuhlanga, ucalulo lobuhlanga,</p>	

		<p>intiyo yabantu bamanye amazwe, intiyo yabathandana besisini esinye nokunye ukunganyamezelani okuyelele apho.</p>	
<p>2. Ukuqokelelwa kwengcombolo</p>	iSebe loBulungisa	<p>1. Kwenziwe kubekho uvimba wengcombolo oqokelelwe kwiindawo ngeendawo ukuze kuqondakale:</p> <ul style="list-style-type: none"> • indlela ezenzeka ngayo izinto kwintyo yobuhlanga; • izithintelo emazoyiswe ekuphelisweni kwentiyo yobuhlanga nocalulo, kunikelwa ingqalelo ikakhulu kwiintlobo zangoku ezithi gqi zocalulo lobuhlanga; • ukufunyanwa kobulungisa ngamakhoba ocalulo lobuhlanga; • ulwazi ngokwalelwa kocalulo lobuhlanga phakathi koluntu ngokubanzi naphakathi kwabantu abasenokuba ngamakhoba; • ukubhebhethekiswa kocalulo lobuhlanga ngamajelo eendaba jikelele (aquka umabonakude, unomathotholo, i-intanethi, amaphephandaba neemagazini); • nokufumaneka kwamaxwebhu abalulekileyo amalungelo oluntu nezinye izinto ezikhusela ukulingana nokungacaluli ngeelwimi zelizwe lonke nezasekuhlaleni kwanakwimo eyenziwe lula. • <p>2. Kusekwe iZiko eliseMbindini leLizwe eliza kukhokela ekusetyenzisweni kwesi siCwangciso.</p>	
<p>3. iCebo Lokusabela Ngokukhawuleza lokuqokelela ingcombolo</p>		<p>1. Kumiselwe iCebo Lokusabela Ngokukhawuleza lokudibanisa iziganeko zentiyo yobuhlanga nezenzo zolwaphulo-mthetho zokuhlaselwa kwabantu bamanye</p>	

		<p>amazwe ezibikwa emapoliseni nakwiKomishoni yamaLungelo oLuntu malunga nenani lamatyala athe atshutshiswa, kwakunye nezizathu zokungatshutshisi, neziphumo zamatyala atshutshisiweyo liGunya loTshutshiso.</p> <p>2. Oku kuza kuquka amaphulo okwenza abantu bazi akhuthaza nawazisa uluntu ngokubika iziganeko zentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho, bekubika kumagunya afanelekileyo.</p>	
4. Uvimba wengcombolo		<p>1. Kuqulunqwe uvimba wengcombolo wabaniki-nkonzo wokunika uncedo kumaxhoba entiyo yobuhlanga, ocalulo lobuhlanga, entiyo yabantu bamanye amazwe, entiyo yabantu abathandana besisini esinye, nokunganyamezelani okuyelele apho.</p> <p>2. ISebe loBulungisa liza kuba nelinki kwiwebsayithi yalo ebonisa abaniki-nkonzo, lize liyenze loo ngcombolo ifumaneke kuzo zonke iiofisi zalo.</p> <p>3. Kuqhutywe amaphulo okwenza abantu bazi rhoqo ngeenkonzo ezikhoyo, kusenziwa oku kubanjiswene nemibutho yaseluntwini.</p>	
5. Uphengululo		<p>1. Kuphandwe ubunjani, oonobangela nendlela ezibonakalisa ngayo intiyo yobuhlanga nocalulo lobuhlanga kokubini kwiindawo zikawonkewonke nakwiindawo ezisekusitheleni.</p> <p>2. Kwenziwe uphengululo ngobulungisa bembuyekezo.</p> <p>3. Kuchazwe indlela esimi ngayo isizwe selizwe lethu, ngakumbi abantu bomthonyama nabantu abangengobemi.⁷⁹</p>	

⁷⁹ Isindululo esenziwe yiKomiti Yokupheliswa Kocalulo Lobuhlanga emva kokuqwalasela ingxelo yeLizwe LaseMzantsi-Afrika ngeICERD, 2006, CERD/C/ZAF/CO/3

		<p>4. Kuqwalaselwe ngokutsha onke amanyathelo athatyathelwe ukuqubisana nemeko yokwahlulwa-hlulwa esazingisileyo eMzantsi-Afrika kuze kuphononongwe isiphumo naso la manyathelo.⁸⁰</p> <p>5. Kukhuthazwe amathuba ophengululo kwimimandla yokuthintelwa kwenziyo yobuhlanga nocalulo.</p>	
6. Imfundo noqeqesho		<p>1. Imfundo noqeqesho luxanduva olusingethwe macala ngamasebe karhulumente nangamaqumrhu eSahluko 9 soMgaqo-siseko. Phantsi kwesi siCwangciso iSebe loBulungisa liza kukhuthaza iindlela ezintlantluninzi zamasebe karhulumente kwakunye namanyathelo athatyathiweyo engawokulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho.</p> <p>2. Kusetyenzwe neSAJEI ukuqinisekisa ukuqeqeshwa okufanelekileyo kwabachopheli bamatyala.</p>	
7. Kuqubiswane nemibandela ehlobene nomhlaba		<p>1. Kuxoxwe kwiingxoxo zelizwe lonke ngomhlaba.</p> <p>2. URhulumente athi gqi noxwebhu lomgaqo-nkqubo olubeka phambili ukwabiwa ngokutsha komhlaba karhulumente ongenamntu, ongasetyenziswayo nongasetyenziswa ngokwaneleyo.</p> <p>3. Kuqinisekiswa ubukho bezicwangciso eziphumelelayo zokwandisa uqeqesho namanyathelo okuncedisa aya kuthi aqinisekise impumelelo yabaxhamlayo ekwenziweni kwenguqu kumhlaba.</p> <p>4. Kwandiswe ubunini bomhlaba, kuphuculwe nokhuseleko kubahlali</p>	

⁸⁰ Isindululo seKomiti Yokupheliswa Kocalulo Lobuhlanga emva kokuqwalasela ingxelo yeLizwe LaseMzantsi-Afrika ngeICERD, 2006, CERD/C/ZAF/CO/3

		<p>basezifama.</p> <p>5. Yonke imibandela emalunga nomhlaba iza kukhokelwa yimithetho yepalamente naziinkqubo zepalamente</p>	
8. Kuncitshiswe ubuhlwempu		<p>1. Wenziwe usebenze umthetho othi makungabikho mntu owamkela imali engaphantsi kweqingqwe ngumthetho kuze kuqinisekiswa ukuba kubekw' esweni ukusebenza kwawo nokunyanzeliswa kwawo liSebe laBasebenzi.</p> <p>2. Kwandiswe izicwangciso zokuphuculwa kwezakhono, kuphuculwe nonxibelelwano ngokufumaneka kwazo.</p> <p>3. Kuphuculwe iindlela zokudalwa kwemisebenzi ukuze amahlwempu abe neendlela zokuphila eziqhubekayo.</p> <p>4. Komelezwe imigudu yokwenza ukutya kungabi nabungozi.</p>	
9. Kukhawulezise ukwenziwa kwenguqu		<p>1. Urhulumente makathi gqi nesicwangciso esithe ukukhuseleka sokuqinisekisa ukuba abantu abantsundu, ulutsha nabasetyhini bayafikelela kumaziko emali kwaye babe ngabanini bawo. Oku kumele kuquke iindlela ezintsha zolawulo nokukhutshwa kweelayisenisi ezikhuthaza ukukhuphisana nezivumela ubunini obahluka-hlukeneyo.</p> <p>2. Kuqhutyelwe phambili ukwenziwa kwenguqu kwicandelo lokhenketho.</p> <p>3. Kubekw' esweni inkqubela ekuyenzeni isebenze imigaqo-nkqubo yobulungisa kwingqesho.</p>	
10. Kurhoxiswe iintsalela ezashiywa yimfundo yokwahlulwa-hlulwa kweentlanga		<p>1. Amanyathelo okuqubisana ngokukuko nemicelomngeni yokungalingani phakathi kwemfundo yasezilalini neyasezidolophini ngokuqinisekisa ukuba axhotyiswa ngokwaneleyo amaziko asezilalini nawasezilalini okuphuculwa kwabantwana</p>	

		<p>beselula nezikolo ngokwenza kubekho izicwangciso zemfundo noqeqesho nezisombululo ezisemgangathweni, eziphumelelayo, ezitsha, neziquka bonke.</p> <p>2. Kuqinisekiswa ukuphuhliswa kwezifundo zokukhuthaza ukuchaswa kobuhlanga nezokukhuthaza ukulingana ukususela ebuntwaneni nakwizifundo zebanga elandulela abaqalayo.</p> <p>3. Kwenziwe yaye kubekw' esweni izicwangciso zokuchasa ubuhlanga kumaziko asebuntwaneni, ezikolweni nakumaziko emfundo ephakamileyo.</p> <p>4. Kudalwe uzimiselo olutsha lokufunda, oluquka izicwangciso ezijoliswe ekulweni intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu abathandana besisini esinye, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho.</p>	
11. Kwandiswe ukuveliswa kolwazi		<p>1. Bancediswe kanobom ababhali abantsundu namagcisa antsundu.</p> <p>2. Kubekho amaphulo okukhuthaza iinkcubabuchopho ezintsundu ukuba zipapashe.</p> <p>3. Kukhuthazwe ukwenziwa kwenguqu kwiinkampani zabapapashi ukuze kukhuthazeke ngakumbi iingcamango zama-Afrika.</p>	
12. Kukhululwe ingqondo kubukolonyali		<p>1. Kusetyenziswe imfundo ukutyala ezingqondweni zabantwana ukuba wonk' umntu unelungelo lokuwafumana amalungelo akhe oluntu nokuthi akukho mntu ungaphezulu kunomnye.</p> <p>2. Kuyilwe iinkqubo kuwo onke amaziko okufunda akhuthaza imigaqo yokunyamezelana ngokobuhlanga, ngokwenkcubeko</p>	

		<p>nangokonqulo kwabo bonke abantu kungakhathaliseki ukuba bahlukanjani.</p> <p>3. Kusetyenziswe amajelo eendaba ukubalaselisa nokubhiyozela ukugqwesa kwabo bonke abantu baseMzantsi-Afrika kuzo zonke iinkalo zemizamo yabantu.</p> <p>4. Kusetyenziswe neSANEF/iinkampani ezingamajelo eendaba/amaqumrhu ahlobene nawo ukuqinisekisa ukuba okwenziwa eluntwini kuyavela noqeqesho oluntlantluninzi lwecandelo lamajelo eendaba lokomeleza ukubika iindaba ngendlela efanelekileyo, enolwazelelelo nenenkathalo</p>	
13 Kukhuthazwe ukumanyana koluntu	<p>ISEbe Lokuphuhliswa Koluntu</p>	<p>1. Kunikwe uluntu ulwalathiso kwiinkalo ezifuna ingqalelo.</p> <p>2. Ukushukumisa uluntu lwemimandla ngemimandla ngokuba neencoko zoluntu ukuze abantu bavakalelwe ngembali yethu ebibangela iyantlukwano neziphumo zayo</p> <p>3. Kwenziwe amaphulo ethu okushukumisa uluntu ukuqubisana nentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe, intiyo yabantu abathandana besisini esinye nokunye ukunganyamezelani okuyelele apho.</p> <p>4. Kuphuhliswe yaye kusetyenziswe ubugcisa nenkcubeko ukukhuthaza ukuxatyiswa ngakumbi kokungafani kwenkcubeko njengento ebalulekileyo yokumanya abantu belizwe elinye.</p> <p>5 Zenziwe zithandekile iindawo eziliqhayiya lelizwe, kukhuthazwe nokuzityelela.</p> <p>6. Kubekw' esweni iziganeko zentiyo yobuhlanga, zocalulo lobuhlanga nezokunganyamezelani okuyelele apho kwimidlalo</p>	

		<p>7. Kusetyenziswe iDBE ukuyila nokuhlaziya imigaqo-nkqubo eza kuquka bonke abachaphazelekayo ekuwenzeni asebenze amaphulo okuchasa ucalulo ukulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyeel apho.</p> <p>8. Kulungelelaniswe inkqubo yokuthabath' inxaxheba ukuphuhlisa iCebo leZwelonke Lokukhusela Nokukhuthaza Amalungelo Abantu Abaziinkawu.</p>	
14. Kufundiswe uluntu ngobuhlanga		<p>1. Kusetyenziswe iintsuku zelizwe zokubhiyozela nokukhumbula ukulwa intiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyeel apho.</p> <p>2. Kusetyenziswe namajelo eendaba/iinkampani ezingamajelo eendaba/Isanef/imibutho yaselunwtini namaqumrhu eSahluko 9 soMgaqo-siseko ukomeleza amaphulo anjengeVeki Yokuchasa Ubuhlanga.</p>	
15. Kulwiwe ucalulo lokuba ungowasiphi isizwe		<p>1. Zihlonelwe iinkcubeko ezingafaniyo, kodwa kananjalo kufundiswe abafundi ezikolweni ngeengozi zocalulo lokuba ungowasiphi isizwe.</p> <p>2. Kubethelelwe ezingqondweni ukuzingca ngelizwe lakho ngokusebenzisa imifuziselo ekhuthaza ukuzazi ukuba ungowaliphi ilizwe.</p> <p>3. Kusetyenziswe amaphulo onxibelelwano karhulumente ukushukumisa uluntu ukuba luluchase ucalulo lokuba ungowasiphi isizwe</p>	
16. Kulwiwe intiyo yabantu bamanye amazwe	iSebe loPhuhliso loLuntu	<p>1. Kuqinisekiswa ukuba ziyasetyenziswa izindululo ezenziwe yiKomiti yePalamente Yethutyana eyiNtlanganisela engokuPhandwa</p>	

		<p>Kokuhlaselwa Kwabantu Bamanye Amazwe nezeQela leMfuduko Nokumanywa Koluntu KwaZulu-Natal, esihlalo wayo bekunguJaji Navi Pillay.</p> <p>2. Kuziwe namacebo okuqinisekisa ukuba abantu abangengabo abemi bayazifumana iinkonzo abanelungelo lokuzifumana ngokoMgaqo-siseko.</p> <p>3. Kukhuthazwe inkcubeko yokuba sisidalwa esingumntu ekuphathweni kwabafudukeli abafudukele kweli, iimbacu nabacela ikhusi.</p> <p>4. Kwenziwe lula ukudityaniswa kwabafudukele kweli bedityaniswa noluntu abaphila phakathi kwalo.</p> <p>5. URhulumente aqwalasele ukubhala umgaqo-nkqubo omalunga nabantu abangenalizwe abangabemi balo, kupheliswe nokuba ngoodingezweni kwabantu bengenalizwe abangabemi balo.</p>	
<p>17. Kupheliswe ukugonyamelwa kwabesini esithile, ukubulalana kwamalungu osapho nokucalulwa ngenxa yesini osiso</p>		<p>1. Kuqutyiswane neenkxalabo eziphakanyiswe kuxwebhu lwezikhalazo i-#TotalShutdown ekuthethwe ngalo kwiSibhengezo ngeNgqungquthela yooMongameli Engokugonyamelwa Kwabesini Esithile Nokubulala Kwamalungu Osapho, ezo nkxalabo ekuzezi: ukusekwa kwesakhiwo esimacandelo maninzi, esilungelelanisayo sokusabela kugonyamelo lwabantu besini esithile nokubulalana kwamalungu osapho, kuquka nokwabiwa kobuncwane obuyimfuneko nobaneleyo obufunekayo, nokuthi gqi necebo lezwelonke lokulwa ukugonyamelwa kwabesini esithithile nokubulalana kwamalungu osapho.</p> <p>2. Kusekwe uNokhala Wokubulalana Kwamalungu Osapho.</p>	

		<p>3. Kukhuthazwe iingxoxo zoluntu zokulwa ukugonyamelwa kwabasetyhini nabantwana.</p> <p>4. Kubekho ubuncwane obaneleyo nokomelezwa kwamaZiko iThuthuzela Care, neeNkundla Zamatyala eSondo neendawo zokuxhwarha.</p> <p>5. Komelezwe ukusetyenziswa kwe<i>Domestic Violence Act</i> 116 ka-1998</p> <p>6. Kuqutyiswane nogonyamelo ezikolweni, kwenziwe bonke abafundi bakhuseleke.</p>	
18. Kuthuthuzelwe amaxhoba obukolonyali nokwahlulwa-hlulwa kweentlanga		<p>1. Kufundiswe abafundi ngembali yethu yobukolonyali nokwahlulwa-hlulwa kweentlanga.</p> <p>2. Kugqityezelwe nawuphi na umsebenzi ongazange ugqitywe weKomiti yeNyaniso noXolelwaniso, kuquka ukwenziwa kwezindululo zayo zisebenze.</p> <p>3. Kukhuthazwe ukutyikitywa kweSivumelwano Esingokwahlulwa-hlulwa Kweentlanga neSivumelwano Sokuchasa Ukunyamalaliswa Kwabantu Ngesinyanzelo</p> <p>4. Yenziwe ithandekwe imifuziselo yelizwe lethu namagorha omzabalazo.</p>	
19. Kukhuthazwe ukwazi ngoMgaqo-siseko nangamalunmgelo oluntu		<p>1. Zenziwe zisebenze iinkqubo ezinjenge-<i>Amarights</i> ukuze abantu bazi ngamalungelo oluntu nangoMgaqo-siseko.</p> <p>2. Kufundiswe abantu indlela yokunyanzelisa amalungelo abo besebenzisa abantu abanjengabameli babo boluntu, amaqumrhu eSahluko 9 soMgaqo-siseko neenkundla.</p> <p>3. Kwenziwe ukuba kuthandwe ukusetyenziswa kweeNkundla Zokulingana, zomelezwe kananjalo.</p>	

		<p>4. Lwenziwe lube yinxalenye yezifundo uKhuphiswano looSinga- nkundla zeZikolo zeLizwe.</p> <p>5. Kuthiwe gqi nezixhobo zale mihla zoomasipala zokulwa intiyo yobuhlanga, ucalulo lobuhlanga nokungabaginyi ncam abantu abathile (njengokuba enzile uMasipala oMbaxa waseDurban).</p> <p>6. Yenziwe ibe yinxalenye yomthetho waseMzantsi-Afrika ngokupheleleyo iCRPD .</p>	
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iSahluko 9: Indlela yokulawula engumzekelo

196. Esi siCwangciso sifuna ukusetyenziswa ngamacandelo ngamacandelo okusekelwe ekubandakanyekeni kwamasebe ahlukeneyo karhulumente namacandelo akhe. Esi siCwangciso sidinga isakhiwo esidibanisa yonke into phantsi kweSebe elibandakanya abathabathi-nxaxheba abaliqela, bephantsi kwegunya lesona sakhiwo siphezulu sopolitiko elizweni. Ukusetyenziswa kwesi siCwangciso ngempumelelo nangendlela enokuziphendulela kuxhomekeke kwisakhiwo solawulo esiphumelelayo nasekubekweni esweni nasekuphononongweni kwezicwangciso ezisetyenziswayo. Oku kugxininisa ukubaluleka kwesakhiwo esichazwe ngokucacileyo esiziqonda kakuhle iindima ezahlukeneyo nemisebenzi yabo bonke abathabathi-nxaxheba ababandakanyekileyo.
197. Ezi zinto zilandelayo kufuneka ziqwalaselwe ekusikhokeleleni ekusekweni kwendlela yokulawula engumzekelo ephumeleleyo:
- (i) ukubaluleka kokuchaphazela abantu bonke kwesi siCwangciso;
 - (ii) ukuphendula kwelona gunya liphakamileyo elizweni, ukuphendula kwiKhabhinethi okanye kwiPalamente;
 - (iii) ukuxhaswa lelona nqwanqwa liphezulu kupolitiko, njengeofisi kamongameli;
 - (iv) ukusetyenziswa kwesi siCwangciso kuwo onke amanqwanqwa karhulumente, sisetyenziswa phakathi kommi nommi naphakathi kukarhulumente nabemi, kubekho inkxaso yopolitiko yawo onke amanqwanqwa (karhulumente welizwe, abamaphondo naboomasipala);
 - (v) ukusetyenziswa kwesi siCwangciso kufuna ukusetyenziswa kwaso ngabo bonke, kokubini licandelo likarhulumente nalicandelo lamashishini azimeleyo;
 - (vi) amalungu anyulwe ngenxa yobuchule bawo nezakhono zawo (umzekelo, kuphengululo; ekuhlalutyweni kwengcombolo; ekuphuhlulweni kwemigaqo-nkqubo nokuhlalutywa kwayo; ukulingana; intiyo yobuhlanga; ukusingathwa kwengcombolo/kolwazi, njl);
 - (vii) Kucingelwe indlela esakheke ngayo isakhiwo, umsebenzi esiwuthunyiweyo, igunya laso, iindima zaso nemisebenzi yaso, nemibandela yolawulo (ukuba masenze ntoni, singenzi ntoni);
 - (viii) kubonwe ukuba ngawaphi amasebe karhulumente aphambili okumela isakhiwo nokuba nenxaxheba kulawulo lwaso;
 - (ix) amasebe karhulumente abone ukuba ngoobani amabawamele aze abe liliso ekuthatyathweni kwenxaxheba kwisakhiwo solawulo;
 - (x) iindima ezichazwe ngokucacileyo nemisebenzi yabo bonke abathabathi-nxaxheba (amasebe karhulumente; amaqumrhu eSahluko soMgaqo-siseko; imibutho yoluntu; izindlu zowiso-mthetho; iinkundla namanye amacandelo ahlukeneyo);
 - (xi) amasebe karhulumente athabath' inxaxheba kwesi sakhiwo ngokwezicwangciso zawo zeAPP nezeMTSF zokusebenzisa izicwangciso zokuchasa ucalulo;
 - (xii) onke amasebe karhulumente anyanzelwe ukuba aqinisekise ukuba iiAPP zawo zibonisa amanyathelo okuchasa ucalulo ngokwesiCwangciso sokugqibela;
 - (xiii) urhulumente njengomthunywa wokunikezela ngeenkono: abahlukanise ngokwaneleyo abasebenzi abangamanani awaneleyo nabaxhaswe ngemali

ukuncedisa isakhiwo solawulo kwakunye nemisebenzi yamaqela ngamaqela awabelwe imisebenzi;

(xiv) ukubalwa kweendleko zesakhiwo sikarhulumente,

(xv) kucingelwe nento yokuba kusenokwenzeka izakhiwo ezikhoyo zizifumane zisenza imisebenzi yezinye izakhiwo ngaphakathi kurhulumente.

198. Iindima ezibalulekileyo zePalamente njengendlu yowiso-mthetho, neKhabhinethi njengorhulumente, zikwelona nqwanqwa liphezulu lesakhiwo solawulo esicetywayo sesiCwangciso ukuqinisekisa ukuiba isiCwangciso esi senziwa sisebenze ngawo onke amanqanaba karhulumente naluluntu nokuqinisekisa ukuxhaswa ngokopolitiko kwelona nqanaba liphezulu. IPalamente imele ibe sencotsheni yesakhiwo solawulo sesiCwangciso. Oku kuza kuqinisekisa ukwenziwa kwesiCwangciso sisebenze kuwo onke amanqwanqwa karhulumente noluntu kuze kuqinisekise ukuxhaswa ngokopolitiko kwelona nqanaba liphezulu.

199. Indima yePalamente yokongamela kwisakhiwo solawulo sesiCwangciso ibalulekile ngezizathu ezilandelayo:

- iPalamente inendima ebalulekileyo emayiyidlale njengesebe eliwis' imithetho likarhulumente;
- UMphathiswa woBulungisa neeNkonzo zoLungiso-similo uphendula kwiPalamente ngeKomiti yayo yaloo njongo;
- IiKomiti zePalamente zizakhiwo ezibalulekileyo zokuqinisekisa ukuthabath' inxaxheba kukarhulumente nokoluntu;
- IiKomiti zePalamente ziliqonga loluntu lokuvakalisa izimvo zalo ngemibandela exutyushwayo;
- Ukuqinisekisa ukuthabath' inxaxheba okwandisiweyo kwamalungu ayo kwiingxoxo ezingemibandela etshis' ibunzi yesiCwangciso;
- Ukunika inkxaso engokopolitiko yenqanaba eliphezulu efunekayo ukuze isiCwangciso senziwe sisebenze;
- Ukuwenza aphenyule onke amasebe karhulumente ngokwenziwa kwesi siCwangciso sisebenze;
- Nokuba liliso nokuphonononga ukwenziwa kwesiCwangciso sisebenze.

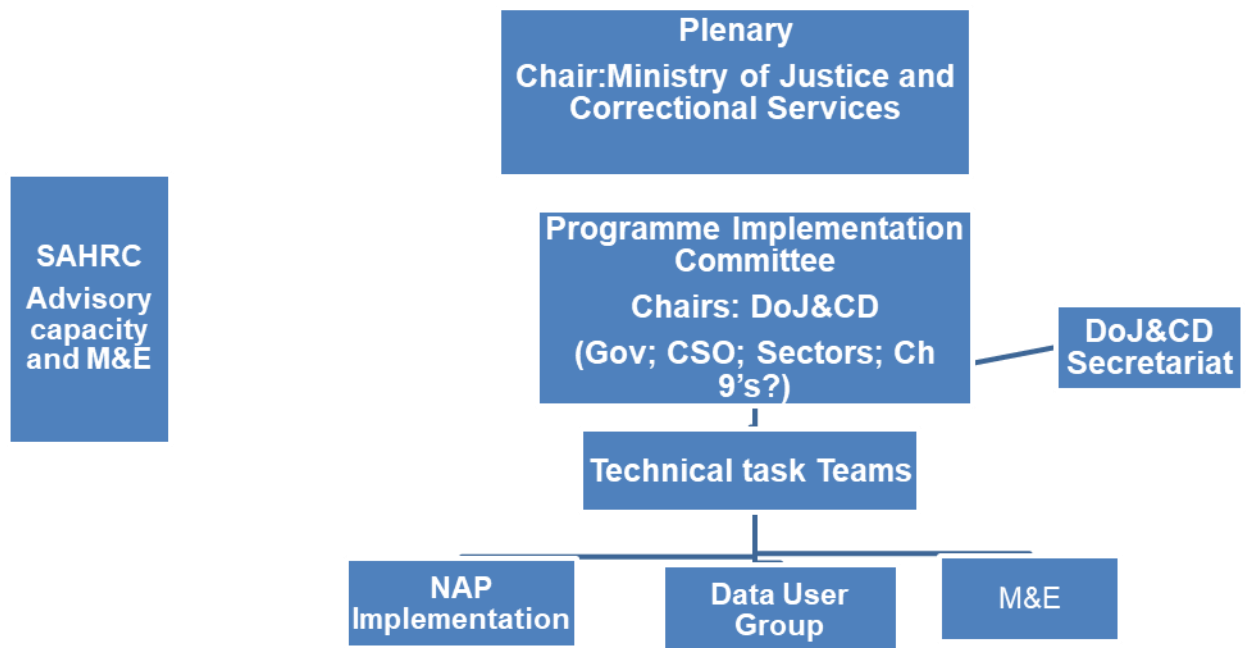
200. Nendima yeKhabhinethi kwisakhiwo solawulo sesiCwangciso ikwabalulekile. Ngenxa yobunjani besiCwangciso esifikelela konke, kufuneka ukuba sisetyenziswe ngaphakathi nangaphandle kwamaqumrhwana karhulumente nakwiiKomiti zeKhabhinethi ezichaphazelekayo, hayi nje kuphela ngaphakathi kweKomiti yeKhabhinethi yoBulungisa neeNkonzo zoLungiso-similo neyamaPolisa neyoKhuseleko. Ngaphezu koko, kufuneka kucingwe ngemfuneko yokufakelwa kwemibandela yasentlalweni kumsebenzi weKomiti yoBulungisa neeNkonzo zoLungiso-similo yeyamaPolisa neyoKhuseleko, ngokuvumelana nomgaqo othi amalungelo oluntu akuyo yonke indawo kwaye awanakwahlukaniswa nomntu, axokomezelelene kwaye ahlobene.

201. IKhabhinethi njengequmrhu elongamileyo elenza imigaqo-nkqubo elizweni, linale misebenzi ilandelayo malunga nesakhiwo solawulo sesiCwangciso:

- Ukongamela ukulungelelaniswa kokusetyenziswa nokubekw' esweni kwesiCwangciso;
- Ukongamela icebo eliquka konke lokwenziwa kwesiCwangciso sisebenze;
- Ukongamela ukuhlolwa kwenkqubela yokwenziwa kwesiCwangciso sisebenze ekunokuthi ngelo cebo ilizwe likwazi ukuzifeza iimbopheleleko elinazo namanye amazwe omhlaba;
- Ukongamela ukunikwa kwengxelo kwelona nqwanqwa liphezulo ngokopolitiko, kuyingxelo ngokwenziwa kwesiCwangciso sisebenze
- Ukongamela ukuzinkqamangela ekwenzeni isiCwangciso sisebenze, kuzinkqamangela onke amasebe karhulumente, icandelo lamashishini azimeleyo, amaqumrhu eSahluko 9 soMgaqo-siseko, uluntu namacandelo ahlukeneyo
- Nokugunyazisa ukuxhaswa ngemali kwesakhiwo solawulo sesiCwangciso.

202. Isakhiwo solawulo esicetywayo siza kuba nosihlalo kwelona nqanaba liphezulu ngokopolitiko, sihlalo lowo onguMphathiswa woBulungisa neeNkonzo zoLungiso-similo. Kwesi sakhiwo solawulo esicetywayo kuza kubakho iNtlanganiso yawo onke amalungu, esihlalo wayo unguMphathiswa, iKomiti Yokusetyenziswa Kwesicwangciso namaQela Awabelwe uMsebenzi. Abasebenzi besi sakhiwo baza kwiSebe loBulungisa.

Isakhiwo esicetywayo solawulo sesiCwangciso



(NB: NOTE THAT THE TRANSLATION OF THE ABOVE ORGANOGRAM IS GIVEN HEREUNDER AS IT IS IMPOSSIBLE TO WRITE ON THE ORGANOGRAM ITSELF)

Plenary = iNtlanganiso Yamalungu

Chair: Ministry of Justice and Correctional Services = uSihlalo weSebe loBulungisa

Programme Implementation Committee = iKomiti Yokusebenzisa isiCwangciso

Chairs: DoJ&CD (Gov; CSO; Sectors; Ch 9's?) = ooSihlalo: iSebe loBulungisa (uRhul; imibutho yoluntu; amacandelo; iSahluko 9)

DoJ&CD Secretariat = Abasebenzi beSebe loBulungisa

Technical Task Teams = Amaqela awabelwe umsebenzi

NAP Implementation = Ukusetyenziswa kwesiCwangciso

Data User Group = iQela Lokusetyenziswa Kwengcombolo

M&E = Ukuhlolwa

203. Imisebenzi ecetywayo yeKomiti Yokusetyenziswa Kwesicwangciso ecetywayo iza kuba yile:

- Ihlanganisane qho ngekota enyakeni;

- Ihlole ukusebenza kwabathabathi-nxaxheba ekwenziweni kwesiCwangciso sisebenze;
- Inike ingxelo kwiKhabhinethi ngenkqubela eyenziweyo ekusetyenzisweni kwesiCwangciso;
- Yalathise ukonganyelwa kwenkqubo yokubekw' esweni kwesiCwangciso nokuphonongwa kwaso
- Isabele kwizikhalo ezingesiCwangciso;
- Inike ukhokelo ngokwenziwa kwesiCwangciso sisebenze;
- Iseke amaqela awabelwe umsebenzi okuqinisekisa ukusetyenziswa kwesiCwangciso nokubekwa kwaso esweni;
- Iqinisekise ukulungelelaniswa nokuyondelelaniswa komsebenzi wamaqela awabelwe umsebenzi.

204. Kuza kubakho amaQela Awabelwe iMisebenzi enjengale ilandelayo:

- ukwenziwa kwesi siCwangciso sisebenze;
- iQela Elisebenzisa iNgcombolo ngeendlela zokuqokelelwa kwengcombolo ngeziganeko zentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyebelele apho;
- nokubek' esweni nokuphonononga (ukwenz' ingxelo ngokwenzeka kumazwe omhlaba nakwilizwe lethu).

205. AmaQela Awabelwe uMsebenzi aza kuba phantsi kwegunya leKomiti Yokwenza uCwangciso Lusebenze kwimisebenzi ayabelweyo. Izindululo zephulo laBancedisi ngokuhlalutywa kweendlela zokuqokelelwa kwengcombolo ngeziganeko zentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunganyamezelani okuyebelele apho, zivumelana nezindululo ezixhasa isakhiwo solawulo esicetywayo.

206. Isakhiwo solawulo esicetywayo sesiCwangciso siza kusebenza njengeziko elingaphakathi kurhulumente njengoko singakufuni nganto ukuba kuwiswe umthetho. Ubuhle beziko elingaphakathi kurhulumente busekubeni uVimba weMali yeSizwe uza kukwazi ukukhusela inkxaso-mali evela kumasebe amacandelo aze ayidlulisele kwisakhiwo solawulo. Iziko elingaphakathi kurhulumente liza kuba kwisebe elithile, kodwa lisebenze lizimele geqe njengoko usihlalo weKomiti Yokwenza uCwangciso Lusebenze eza kuba phantsi kwegunya loMphathiswa. Ukongamela kuza kuba kokukaRhulumente. Iziko elingaphakathi kurhulumente liza kukwazi kananjalo ukufumana iimali ezivela kwabanikelayo abakumazwe ngamazwe.

207. Abathabathi-nxaxheba abahluka-hlukeneyo abamelweyo kwiSakhiwo soLawulo sesiCwangciso baza kuquka:

- amasebe karhulumente angundoqo;
- amacandelo aseluntwini (imibutho engengokarhulumente nemibutho yasentlalweni; amaqela athethelela abanye; imibutho yokholo; amaziko emfundo ephakamileyo;

abasebenzi; abamele umthetho namalungelo oluntu; abemidlalo; abasetyhini nolutsha; abafudukeli/iimbacu/imibutho yabafuna ikhusi);

- amacandelo (aweendaba; awabasebenzi; awoshishino);
- amaqumrhu eSahluko 9 soMgaqo-siseko,
- nabahlohli baseziyunivesithi/ namaziko ophengululo.

208. iSebe elingaphakathi kweSebe loBulungisa noPhuhliso loMgaqo-siseko, enyanisweni elingaphakathi kweCandelo eliyiNtloko: kuBulungisa baseNtlalweni noThabatho-nxaxheba lweNtando yeSininzi, neCandelo loBulungisa baseNtlalweni aza kuqhubeka enika inkxaso kwisakhiwo esitsha solawulo, ekwenza oko ngabasebenzi. Isakhiwo sangoku sabasebenzi kufuneka sijongwe njengesiqinisekisa ukuba sinabasebenzi abaneleyo bokuxhasa ukwenziwa komsebenzi wesakhiwo solawulo, size sidlale indima ebalulekileyo, phakathi kwezinye izinto—

- ekusungulweni kwesakhiwo solawulo, ekusixhaseni nasekusilungelelaniseni ukuqinisekisa ukuba isiCwangciso senziwa sisebenze;
- ekusikhuthazeni nasekusalathiseni isiCwangciso;
- ekukhuthazeni, ekukhuseleni nasekuthetheleleni ukupheliswa kwazo zonke iintlobo zentiyo yobuhlanga, zocalulo lobuhlanga, zentiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho;
- ekuqhubeni uphengululo ngezinto ezithintela impumelelo yokuvana kweentlanga;
- ngokubambisana nabachaphazelekayo, ekuphuhliseni amaphulo ahlukahlukeneyo nasekuwenzeni asebenze, kuxhaswa isiCwangciso;
- ekuqokeleleni ingcombolo okanye ukuyihlolutya, ekudaleni uvimba wengcombolo nasekulungiseleleni iingxelo ngokwenzekayo malunga neziganeko ezichatshazelwa sesi siCwangciso (ngoncediso phantsi kweSEJA);
- ekukhuthazeni amacebo okuphengulula nohlolisiso olwenziwa ziikomishoni kuxhaswa isiCwangciso;
- ekuqhubeni uhlolo-zimvo (phantsi kweSEJA);
- ekuzibekeni esweni izinto ezenzekayo neziganeko zentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nokunye ukunganyamezelani okuyelele apho;
- ngokusabela ngokwaneleyo kwezo ziganeko, ngokulungelelanisa ngempumelelo amasebe karhulumente nabachaphazelekayo;
- ekwenzeni lula nasekukhuthazeni iinkqubo ezingokunyamezelana nokuqondana ekungafanini kwabantu baseMzantsi-Afrika;
- ekuqinisekiseni ukusekwa kwecebo leM&E.

209. Ubuhle besakhiwo solawulo esicetywayo busekubeni indibano enye yongamela yonke imisebenzi; kubakho isakhiwo esinye esenza izigqibo; kubakho ukumelwa kwamacandelo amaninzi, kanti nemisebenzi yokwenziwa kwezigqibo iba ndawonye kwiziko elinye.

limbopheleleko zokunik' ingxelo

210. Ukuphendula nokwenzela izinto elubala kubalulekile ukuze esi siCwangciso sibe nempumelelo. Njengoko isiCwangciso sinobuqabane obubandakanya amacandelo ngamacandelo oluntu, iziphumo zixhomekeke kwindlela abasebenza ngayo ndawonye urhulumente noluntu. Ukuyibek' esweni inkqubela nokwenz' ingxelo zizinto ezingundoqo ukuze siphumelele esi siCwangciso. Ngenxa yoko ke, kuza kubakho indlela yokuba kuphendulwe. Ukuze kuphononongwe impumelelo yaso yexesha elide, isakhiwo solawulo sezwelonke sikunye neKomishoni yamaLungelo yaseMzantsi-Afrika namanye amaqumrhu eSahluko 9 soMgaqo-siseko aza kubambisana ukuze aqonde ukuba angaqonda njani xa kukho inkqubela ekulweni nentiyo yobuhlanga. Abathabathi-nxaxheba abahluka-hlukeneyo baza kuqhubeka bequbisana nentiyo yobuhlanga nemibandela yeenkcubeko ngeenkcubeko apho kuthwaliswene uxanduva kunye, baze bancedise ekulungelelaniseni ukuncazelana ngengcombolo. Kufuneka kucingwe nzulu ngokuxutyushwa kwale ngxelo yonyaka kwiNdlu yoWiso-mthetho.

Ukwakha ukuncedisana namanye amaphulo karhulumente

211. Phantsi kokukhokelwa sisakhiwo solawulo esicetywayo, iSebe loBulungisa liza kuba noxanduva lokwakha ukuncedisana phakathi kwesiCwangciso nezinye izicwangciso zamanyathelo eziqulunqwe ngamasebe karhulumente, ngamaqumrhu eSahluko 9 soMgaqo-siseko, luluntu nangamanye amacandelo. Lifanele lakhe ukuncedisana kwemithetho nemigaqo-nkqubo esetyenziswa ngurhulumente echaphazela intiyo yobuhlanga, ucalulo lobuhlanga namanyathelo athatyathelwe ukuqubisana iintsalela ezishiywe kukwahlulwa-hlulwa kweentlanga.

ELOKUQUKUMBELA

212. UMzantsi-Afrika uye waba sisibane esikhokelayo ehlabathini ekoyiseni intiyo yobuhlanga. Esi siCwangciso sisiseko sokwakhela phezu kwaso oko esesithe saphumelela ukukufeza ukuza kuthi ga ngoku. Esi siCwangciso silithuba elihle lokuba ilizwe lethu nabantu balo beentlanga ngeentlanga bahlaziye ukuzinkqamangela kwethu ekulweni nentiyo yobuhlanga, ucalulo lobuhlanga, intiyo yabantu bamanye amazwe nezinye iintlobo zenzondo nokunganyamezelani. UMzantsi-Afrika ungowethu sonke esihlala kuwo — simanyene ekungafanini kwethu.