



UKUVUSELELWA: Isidingo esimqoka sabayizisulu zokuhlukunyezwa

Uhlu lwamaqiniso le CSVr ekuvuselelweni kwalabo abahlukumezekile | September 2015

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THE UNITED NATIONS CONVENTION AGAINST TORTURE (UNCAT)

ARTICLE 14

EACH State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.

ISISUKELA

Isenzo sokuhlukumeza sibangela ubuhlungu obukhulu nenhlupheko engaba emzimbeni noma engqondweni yalowo ohlukunyezwayo. Inhloso yokuhlukumeza ukwephula noma ukukhuba lowo ohlukunyezwayo, lokho kubangela ukucekela phansi isithunzi nesi-qu salowomuntu. Ukuhlukumeza kuvamise ukudala ezinye izinkinga eziqhamuka kamuva empilweni yomuntu ohlukunyezwayo, lokhu kungahlala kubabangela izibazi emzimbeni nasemphefumulweni. Uma ohlukunyezwayo esephukile noma esekhukile, kumele athole ukuvuselelwa ukuze akwazi ukuphindela empilweni yakhe yangaphambili, kubuye isithunzi nokuzethemba.

Uyini umthelela wokuhlukumeza empilweni yalowo ohlukunyezwayo nosindile ekuhlukunyezweni?

Ukuhlukumeza kuthinta lowo osindile ekuhlukunyezweni, umndeni wakhe, nomphakathi wonke. Eqinisweni, Ukuhlukumeza kudala ubuhlungu nemithelela enshintsha impilo, lokho kudinga usizo nokungenelela okukhulu ukwenza ukuthi impilo yohlukunyezwayo ikwazi ukuphindiselwa esimeni sokusebenza kahle.

Imithelela evamisile ngokwenhlonhle yomqondo walowo ohlukunyezwayo iyachazwa:

ULAKA: Ulaka enye yezinto ezivamile ekuziphindiseleni ekuhlukunyezweni, imvamisa aluqondiswa kuphela kulowo ohlukunyezwayo, lungabhekiswa kwabanye abaningi ngisho abomthetho imbala nakulabo ababonakala benamandla athile. Isifiso sokuziphindiselela kulowo ohlukunyezwayo singaba namandla kwisisulu sokuhlukunyezwayo isikhathi esiyiminyaka (eside kakhulu). Kungabanzima ukwehla kolaka ngoba kungase kubonakale ukuthi lowo ohlukunyezwayo uyazidela noma uyayekelela kulowo omhlukunyezwayo. Ulaka kuvamise ukuba indlela yokufihla noma yokucindezela eminye imizwa njengokuhlazeka, nokungabi namandla. Isisulu sokuhlukunyezwayo singabhekisa lolulaka kusona, sizibeke icala ngokuhlukunyezwayo noma sizisole ngokungakwazi ukuzivikela yena kanye nomndeni wakhe ekuhlukunyezweni. Ukungenelela ukubhekana nalolulaka kumbandakanya ukuluqonda lolulaka, ukuqeqesheka ekubhekaneni nemizwa yalolulaka, namasu okuphumula.

UKULILA NOMA UKULAHLEKELWA: Isisulu sokuhlukunyezwayo kuvamise ukuba sibhekane nokulahlekelwa okuningi ngenxa yokuhlukunyezwayo. Kungenzeka ukuba balahlekelwe othandawo wabo ngenxa yokuhlukunyezwayo, kungenzeka balahlekelwe ukusebenza ngokomzimba okuthile noma ukulimala komzimba, noma balahlekelwe isithunzi sabo. Ukungenelela ekubhekaneni nokulahlekelwa kumbandakanya ukuqonda ukulahlekelwa nokuthi kuchaza ntoni kulowo olahlekelwe.

UKUPHAZAMISEKA KWEMIZWA: Ukuphazamiseka kwemizwa okujwayelekile kwizisulu zokuhlukunyezwayo bubu ucindezeleko nokuhlukunyezwayo. Izimpawu zocindezeleko kuba ukungalali kahle, ushintsho ekuthandeni ukudla, ukuhlala ukhala, ukuphelelwa ithemba, imicabango yokuzibulala, nokuphelelwa intshisekelo. Izimpawu zokuhlukunyezwayo zibandakanya ukukhathazeka kakhulu, ukulindela ukuthi kwenzeka into embi, ukuhlalela ovalweni, nokusheshe uzwele. Ucindezeleko nokuhlukunyezwayo kuvame ukuhambisana noma umuntu angabanakho kokubili ngezikhathi ezahlukene. Ukuphazamiseka kwemizwa kunomthelela endleleni abantu abahlela ngayo, nasekutholeni isisombululo ezinkingeni lokho okubangela ukuthi izingqinamba ezilula zigcine seziba nzima. Ukungenelela ekubhekaneni nocindezeleko nokuhlukunyezwayo kumbandakanya ukufunda ngokuziphatha, amasu okuphumula, ukuzigqogquzela ekwenyuseni imisebenzi noma izinto ozenzayo, ekwenyuseni amakhambi nemithi.

UKUSABELA EKHUKUNYEZKENI: Kujwayelekile kakhulu ukuthi izisulu zokuhlushwa zizizwele zihlukunyezwayo emva kokuba zihlushiwe. Lokho kungaba okunye noma okuningi kokulandelayo, isithombe esisengqondweni kwento eyenzakele, amaphupho amabi, ukubangathi kuyaphinda ukuhlukunyezwayo, imicabango ethusayo, ukuhlalela ovalweni, ukuzisola ukuthi uneqhaza, ukuzikhipha ebantwini, ihlazo, ukuhlambalazeka nokusebenzisa izidakamizwa. Lezizindlela zokubonisa ukuhlukunyezwayo zingaba nomthelela omkhulu endleleni lowo ohlukunyezwayo asebenza ngayo, nasekuphileni impilo ejwayelekile. Ukungenelela kumbandakanya ukufunda ngokuziphatha, ukubona noma ukwazi ngokuhlukunyezwayo, ukubhekana nezimpawu, amasu okuphumula, amasu okucabanga, noma yimithi.

UKUBHIDLIZEKA KOMNDENI: Uma isisulu sokuhlukunyezwayo siba noshintsho kwinhlalokahle ngokomqondo, lokho kuba nomthelela emndenini. Uma isisulu sihlukunyezwayo kambe sihlazekile noma sizizwa sinengcindezelo, kaningana lowomuntu uye azihlukanise nabantu, lokho kuba nomthelela ebantwini abasondelene naye. Lokhukushintsha ngokomqondo kungabanga ingxabano phakathi kwemindenini. Abantu abathintekile ekuhlukunyezweni kuyenzeka futhi ukuthi babenoshintsho esimeni somnotho, lokho kuba nomthelela enindenini. Ukungenelela ekubhekaneni nokubhidlizeka kwemindenini kumbandakanya ukuphatha nokunakekela lowo ohlukunyezwayo, kodwa nokululeka umndeni – ukungenelela okubhekiswe emndenini wonkana, kungaba usizo olukhulu olungaholela ekuqondaneni kangcono nozwelo omunye komunye.

INHLUNGU: Ukulimala emzimbeni okutholakale ekuhlukunyezweni zivamise ukuba nomthelela ekusebenzeni kwalowo ohlukunyezwayo isikhathi esiyiminyaka emva kwalesosigameko, kwesinye isikhathi abantu bashiyeka bekhubazeka unomphela. Inhlungu ivamise ukuhlala iyisikhumbuzo sokuhlukunyezwayo, lowo ohlukunyezwayo angezwa sengathi lenhlungu iyindlela ebonisa ukuthi ukuhlukunyezwayo kusasikhungethe. Inhlungu ingabangela ukucindezeleka, ukungakwazi ukugxila entweni, ukucasuka, ulaka, ukuhoxa nokuzehlukanisa ebantwini. Ukungenelela ngokwengqondo ekubhekaneni nobuhlungu kumbandakanya ukuphumula nokufunda ngokuziphatha, ukubhekana nokudambisa izinhlungu, ukugqogquzelekanokusebenzisa amakhambi / imithi ngokufanelekileyo.

UBUNZIMA NGOKWENGQONDO: Kwesinye isikhathi labo abayizisulu bangaba nokulimala ekhanda ngenxa yokuhlukunyezwayo. Bangabonisa ukukhohlwa, ukungakwazi ukugxila entweni, ukwehla kwezinga lokusebenza, ukuhluleka ukuhlela, nokuhluleka ukuhlanganisa izinto ngenxa yokulimala.

THE UN COMMITTEE AGAINST TORTURE

GENERAL COMMENT NO. 3

ALL TORTURE VICTIMS have a right to rehabilitation, which should be:

- Holistic, including medical and/or psychological treatment, social, vocational and legal support
- Available, appropriate and accessible without discrimination
- Provided in a way that guarantees the safety and personal integrity of the victims, their family and their caretakers
- Provided at the earliest possible point in time after the torture event
- Provided without a requirement for the victim to pursue judicial remedies, but solely based on recommendations by a qualified health professional

Ilungelo lokuvuselelwa kwezisulu zokuhlukumezeka

Inhlalanhle ngokwengqondo yalabo abahlukunyeziwe ibaluleke kakhulu ukuzama ukuvala lobubuhlungu obenzeke empilweni yalowo ohlukumezekile. Yingakho ukuvuselelwa kwalabobantu kungamelanga kube yinto ecatshangwa kamuva noma eyenziwa nje ngoba kumele yenziwe, kodwa kumele kube yiyona sisekelo esibalulekile ekuphindiseleni izimpilo ezihlephukile esimweni ebeziyiso ngaphambi kokuhlukumezeka.

Phezukwalokho, ukuvuselelwa kwalabo abahlukumezekile akusona sodwa isidingo labo abahlukumezekile abanaso, kodwa kulilungelo ngaphansi kwesihloko 14 enhlanganweni yamazwe ahlangele alwisana nokuhlukunyezwa (UN Convention against Torture). Lelilungelo lihlelekile emthethweni womhlaba wamalungelo abantu namalungelo esintu.

Umzansi Afrika njengengxenye yamazwe ahlangele alwisana nokuhlukumeza - ibophezekile ukubhekelela lokhu maqondana nalabo abahlukumezekile:

- Imithetho yasekhaya inikeza igunya lokuvuselelwa kulabo abahlukunyeziwe.
- Inqubomgomo kahulumeni nesabelozimali sikahulumeni zenza kubekhona kubantu, kuphinde kufikeleleke kwizidingongqangi zokuvuselela labo abahlukumezekile nabahlushiweyo ngaphakathi koMzansi Africa.
- Bonke abahlukunyeziwe nabaphethwe kabi banokuzikhethela phakathi kokuya kwizizinda zokuvuselela ezingaphansi kombuso noma lezo ezizimele, lapho zonke izindleko zalolosizo zithwalwa uhulumeni (siqusakhe noma ngandlelathizeni), nalolosizo olutholakale ezizindeni ezingezona ezikahulumeni luyamukeleka njengolufanelekile.
- Labo abahlukunyeziwe nalabo abaphethwe kabi bayakwazi ukuthola usizo lokuvuselelwa masinyane emva kokuhlukumezeka, lokhu kumbandakanya ukuthi bahlolwe ngokwempilo yomzima nangokomqondo.
- Labo abahlukumezekile abadinga ukuncedakala bayabekwa esimweni sokubhekelela njengezisulu banikwe ukusekelwa ngokomqondo.
- Ukwakha indawo ephaphile, ethembakele enokukwazi ukunika usizo lokuvuselela, ekwaziyo nokuvikela ngokuyimfihlo imininingwane yalabo abahlukumezekile.
- Iqaphele ukuthi isibophu esingaphansi kwesihloko 14 se UNCAT ayichazi ukubakhona kwezinsiza futhi ayikwazi ukuhlehliswa.

THE ROBBEN ISLAND GUIDELINES

PART III

...STATES should ensure that all victims of torture and their dependants are offered appropriate medical care, have access to appropriate social and medical rehabilitation provided with appropriate levels of compensation and support. In addition there should also be a recognition that families and communities which have also been affected by the torture and ill-treatment received by one of its members can also be considered as victims

Izincomo zokuqinisekisa ukuvuselelwa kwalabo abahlukumezekile eMzansi Afrika

I-CSVR seyinikezele usizo ngokwe mpilo-ngqondo kulabo abahlukumezekile isikhathi esingaba iminyaka eyisithupha edlulile. Lesisizinda siphinde saba nezingxoxiswano nomphakathi jikelele, senza nocwaningo ngezidingo zalabo abasindile ekuhlukunyezweni. Ngenxa yalomsebenzi owenziwe, lezi yizincomo ezinzulu ngokumele kwenziwe ukuhlangabezana nezidingo zalabo abasinde ekuhlukunyezweni eMzansi Afrika: Kungancomeka ukuthi:

- Uhulumeni ngokubambisana neminyango yezempilo, Umnyango wezokuthuthukiswa kwezenhlalakahle, amaphoyisa, Umnyango wezobulungiswa nokuhlumelelisa kwezimilo, kumele babalulekise ukuvuselelwa kwalabo abasinde ekuhlukumezekeni.
- Iminyango ehlukeni kahulumeni iqeqeshwe ngokuhlukumeza, imithelela nemiphumela eba nayo empilweni yalowo ohlukumezekile, nesidingo sokuvuselela, noxhaso lwenhlalakahle ngokomqondo.
- Izinyathelo ezikhona zeminyango kahulumeni ezinjengohlelo lokubiyusela amandla kwabahlukumezekile (engaphansi kukahulumeni wokuthuthukiswa kwezenhlalakahle), zidinga ukuqinisa zibuye zimbandakanye labo abahlukumezekile kuloluhlelo, nokuqeqeshwa kwabezenhlalakahle abanikeza uxhaso ngokwenhlalakahle yengqondo kulabo abahlukunyeziwe. Umnyango wezempilo kumele uqinise ukunikezela kosizo lokuvuselela kulabo abahlukumezekile ezibhedlela ezahlukene nakwimithombo yezempilo eseMzansi Afrika.
- Kunesidingo sesabelo zimali ezweni esizobhekelela labo abahlukumeziwe ukuba bakwazi ukufikelela kusizo lwamahhala ezizindeni zikahulumeni ezifana nezibhedlela, nemitholampilo.
- Izindlela zokucobelelana nokushintshana ngolwazi nokuxhumana neminye imizamo kahulumeni yokuvuselela kumele zisungulwe ngenhloso yokufundisa eMzansi Afrika. Imiphakathi nemindeni akumele ishiywe emuva kulamasu azama ukuvuselela labo abahlukunyeziwe ngoba, imindeni nemiphakathi iyathinteka kulokhukuhlukumezwa. Amasu okuvuselela kumele akhelwe oxhasweni lomphakathi, abuye aholwe yibona labo abahlukumezekile.
- Izindlela zesintu zokuphilisa nazo zidinga ukumbandakanywa kulamasu okuvuselela njengoba imiphakathi yeAfrika ikahlulukazi amadoda asayingabaza indaba yokululekwa nokuthola usizo ngenhlalakahle yokomqondo.

NGE CSVR

ICSVR isizinda esihlanganisa ochwepheshe abahlukene ababhekene nokwenza ucwaningo, ukwakha imigomo, ukuvuselelwa kwenhlalakahle yomqondo, ukunikeza izidingo, ukufundisa nokuqeqesha, nokunikeza usizo . Umgomo omkhulu we CSVR ukusebenzisa ubuchule ekakheni ukubuyisana, intanto yeningi, isiko lamalungelo abantu ekuvikeleni udlame eMzansi Afrika namazwe eAfrika yonkana.

NGOMTHOLAMPILO WE CSVR

Umtholampilo wokuhlukumeza unodokotela abaqeqeshiwe abanika usizo nokululeka kumuntu, kwiqembu nakumndeni yalabo abahlukunyeziwe. Isisizinda seCSVr sisungule indlela yesiAfrika yokuvuselela egxile kumongo onolwazi, enobufakazi benhlalakahle ngokomqondo, kokuvuselelwa kwalabo abahlukumezekile. I-CSVR inikezela uqeqesho, ukukhulisa nokusabalalisa ulwazi lokusiza abantu ukuthi baqonde imiphumela nemithelela yokuhlukumeza nanokuqedwa kodlame.



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