

UMthetho Ochibiyelwe Wenqubo  
Yokujeziswa Kwezaphulamthetho

# Amacala Ezocansi

Ofingqiwe unamba-32 wango-2007

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*UMthetho Ochibiyelwe Wenqubo Yokujeziswa Kwezaphulamthetho (Amacala Ezocansi)* (obizwa 'ngoMthetho kule ncwajana') selokhu waqala ukusebenza mhla zingu-16 Disemba 2007 kanti unomthelela esijeziweni sobugebengu bezocansi obenziwe emva kwalolu suku.

UMthetho lona ungena endaweni yezihlinzeko zamacala ezocansi kanye nezinye izingxenye zomthetho omdala, *UMthetho Wenqubo Yokujeziswa Kwezaphulamthetho unamba-23 wango-1957*. UMthetho wakha futhi ubugebengu obusha bezocansi.

Izinhlalo ezinkulu zoMthetho omusha yilezi:

1. Ukufaka bonke ubugebengu bezocansi emthethweni owodwa;
2. Ukuchaza bonke ubugebengu bezocansi;
3. Ukwenza zonke izinhlobo zokunukubeza ngokocansi noma ukuxhaphaza kube yicala;
4. Ukuqinisekisa ukuthi abesilisa nabesifazane bayawusebenzisa umthetho ngokuphathelene nobugebengu bezocansi;
5. Ukuqinisekisa ukuthi iminyango kahulumeni isebenza ngokubambisana ukuvikela abamangali ekuphathweni kabi noma ekwethukeni okukhulu emva kwesehlakalo;
6. Ukwenza ngcono indlela izikhungo zezobulungiswa (izinkantolo namaphoyisa) ezisebenza ngayo;
7. Ukunquma iminyaka lapho abesilisa nabesifazane benganika ngayo imvume yokuya ocansini, iminyaka engu-16;
8. Ukuqinisekisa ukuthi abadlwenguliwe bathola umuthi ophuzwa emva kokudlwengulwa umuthi obizwa nge-post-exposure prophylaxis (PEP), okuwukwelapha okunciphisa amathuba okuthola i-HIV emva kokudlwengulwa;
9. Ukuvumela abadlwenguliwe bathole ukuthi ngabe umuntu omdlwengulile unayoini i-HIV; kanye
10. Nokwenza iBhuku Likazwelonke (uhla lwamagama) ezigebengu ezinukubeza ngokocansi.

*Le ncwajana ifingqa izihlinzeko eMthethweni omusha kanye nemithetho ehambisana nawo. Le ncwajana ayihlaziyi ukusebenza ngempumelelo kwalezi zihlinzeko.*

## Amanothi amagama asetshenziwe:

11. Ummangali kwesinye isikhathi ubhekiswe ku 'Mpho', isephulamthetho noma umsolwa u 'Lee' kanti umuntu wesithathu u 'Jabu'.
12. UMthetho kanye namanye amaphepha oMnyango Wezobulungiswa abhekise 'esizulwini' noma 'abammangali' hhayi 'abasindile' – incwajana ikhombisa amagama asetshenziwe eMthethweni.
13. Lapho incwajana ibhekise khona 'kowsilisa' noma 'owesifazane' lokhu kufanele kufundwe ukubandakanya ubulili bobubili.

# Amacala ezocansi

Izinto ezimbili ezibaluleke kakhulu emacaleni ezocansi kulesi sigaba yilezi:

- Inhloso yesaphulamthetho (u-Lee) ukwenza icala kanye
- Nokungabi khona kwemvume yommangali (uMpho).

'inhloso' – amabomu noma inhloso, ukuthatha isinqumo nokwenza icala  
'ukuphoqa' – ukusebenzisa amandla noma igunya lokwenza ukuthi omunye umuntu enze okuthile

Izenzo zocansi amacala uma zenziwe ngaphandle kwemvume yabantu ababandakanyeka esenzweni socansi. Inkantolo kufanele ithathe isinqumo sokuthi ngabe uMpho uye wayinikeza yini imvume yesenzo socansi.

'Imvume' ichaza isivumelwano esenziwe ngokuzithandela noma ungaphoqwanga muntu ukusenza. Lokhu kusho ukuthi uMpho kufanele avumele ngenkululeko, ngokuthanda futhi azi isenzo socansi; futhi uMpho kufanele aqonde ukuthi uvumani.

UMthetho unikeza izibonelo ngesikhathi uMpho engavumi ukunikeza imvume yesenzo socansi:

- Uma uMpho ezinikela esenzweni socansi ngoba ephoqwe u-Lee, esabise noma esongele uMpho noma uJabu noma esonge ngokuthi uzolimaza impahla kaMpho noma kaJabu
  - Isibonelo: U-Lee uthi uzobulala ingane kaMpho uma engayi ocansini naye. Ngakho uMpho, useyesaba manje akenqabi ngenxa yalolu songo.
- Uma u-Lee esebenzisa ngokungeyikho amandla akhe noma igunya analo kanti uMpho akakwazi ukukhombisa ukungasivumi isenzo socansi
  - Ake sithi: u-Lee unguthisha kaMpho. U-Lee uthi uMpho kufanele aye naye ocansini. UMpho uyesaba ngokuzokwenzeka esikoleni uma enqaba ukuya ocansini no-Lee, angahle angamphumelelisi.
- Uma uMpho enza sengathi uyasivuma isenzo socansi
  - Ake sithi: u-Lee ungudokotela kaMpho. U-Lee wazisa uMpho ukuthi udinga ukumbhucunga ngasesithweni sangasese njengenqubo yokumelapha. UMpho avume kodwa engazi ukuthi u-Lee lokhu ukwenzela ukuzijabulisa ngokocansi.
- Lapho uMpho engakwazi ukucabanga kahle khona noma ukuqonda uhlobo lwesenzo socansi ngaleso sikhathi ngoba uMpho –

- ulele,
- uqulekile,
- akakwazi ukucabanga kahle ngenxa yezidakamizwa noma utshwala
- ingane engaphansi kweminyaka engu-12, noma
- umuntu okhubazeke ngokwenqondo.

Lokhu kusho ukuthi noma ngabe uMpho usivumile isenzo socansi, ubengakwazi ukunikeza imvume efanele ngenxa yezimo ezibalulwe ngenhla.

## Isibonelo lapho imvume ingekho khona

U-Egglestone ebhekene noMbuso, Inkantolo Enkulu Yokwedluliswa Kwamacala, 2008

U-Egglestone wanikeza u-N umsebenzi wokwemukela abantu enhlanganweni yakhe lapho abesifazane bethengisa khona ngemizimba. Njengengxenywe yokumqeqesha, wamthinta amabele nesitho sangasese wase eya naye ocansini. U-N waqale wenqaba ukuya naye ocansini kodwa ekugcineni wazinikela ngoba watshelwa ukuthi ngeke awuthole umsebenzi wokwemukela abantu enhlanganweni. Inkantolo yathi, ngoba u-Egglestone wayemdala kakhulu kuno- N futhi enamandla kunaye ngoba edinga umsebenzi, U-N wayengakwazi ukunikeza imvume efanele ezenzweni zocansi.

## Ukudlwengula (isigaba 3)

Ukudlwengula kwenzeka uma u-Lee enza ngenhloso isenzo *sokungena ngokocansi* kuMpho, ngaphandle kwemvume kaMpho.

**'Ukungena umuntu ngokocansi'** kubandakanya noma yisiphi isenzo esidala ukuthi kube khona okungena kowesifazane ngokuthi-

- Isitho sangasese sika-Lee singene ezithweni zangasese, ididi noma umlomo kukaMpho;
- Noma iyiphi ingxenywe yomzimba ka-Lee noma, yini, engena ezithweni zangasese noma edidi likaMpho; noma
- Izitho zangasese zesilwane zingene emlonyeni kaMpho.

Isibonelo, u-Lee wenza icala lokudlwengula uma u-Lee engena ngokocansi kuMpho ngokuthi afake ipipi lakhe embotsheni yangaphambili kaMpho, edidi noma emlonyeni, ngaphandle kwemvume kaMpho.

UMthetho futhi wenza icala elisha elibizwa '**ngokudlwengula okuphoqiwe**' (isehluko 4). Kulapho uJabu ephoqwa u-Lee ukuthi angene ngokocansi kuMpho ngaphandle kwemvume kaMpho noma kaJabu.

'ukungena' – kusho ukufaka okuthile

'ukuphoqa' – ukuphoqa umuntu ukuthi enze okuthile

## Ukuhlasela ngokocansi (isigaba 5)

Lobu bugebengu buthatha indawo yobugebengu bangaphambilini

*Ukuhlasela Okungafanelekile.*

Ukuhlasela ngokocansi kwenzeka ngesikhathi u-Lee *enyathela amalungelo aphaathelene nocansi* kaMpho ngabomu ngaphandle kwemvume kaMpho.

Ukuhlasela ngokocansi kuyenzeka futhi lapho u-Lee esongela ukunyathela amalungelo aphaathelene nocansi kaMpho.

'**Ukunyathela amalungelo aphaathelene nocansi**' kubandakanya noma yisiphi isenzo esidala –

- Kube khona ukuthintana ngqo noma ngenye indlela phakathi
  - Kwezitho zangasese, ididi noma amabele owesifazane omunye umuntu, kanye nanoma iyiphi ingxenye yomzimba yomunye umuntu, isilwane, noma into ethile;
- Umlomo womunye umuntu kanye -
  - Nezitho zangasese, ididi noma amabele omunye;
  - Umlomo womunye umuntu;
  - Noma iyiphi enye ingxenye yomzimba yomunye umuntu edala ukuqhanyelwa;
  - Noma yini efana nezitho zangasese, ididi namabele;
- Umlomo kaMpho kanye nezitho zangasese noma ididi lesilwane;
  - Ukushayiswa indlwabu omunye umuntu; noma
  - Ukufaka noma yini efana nezitho zangasese zomuntu noma zesilwane emlonyeni noma ngale komlomo kaMpho.

Isibonelo, uma u-Lee ethinta amabele kaMpho noma eqabula uMpho, ngaphandle kwemvume kaMpho.

*izitho zangasese*<sup>1</sup> – zibandakanya zonke noma ingxenye yezitho zangasese zowesilisa nowesifazane kanye nezitho zomzimba ezifakwe ngokuhlizwa noma ezibuye zenziwa futhi.

Ubugebengu obuhambisana nabo ukuhlasele ngokocansi okuphoqiwe (isigaba 6) kanye nokuzihlasele ngokocansi okuphoqiwe (isigaba 7).

Ukuhlasele ngokocansi okuphoqiwe kwenzeka uma u-Lee ephoqa uJabu ukuthi ahlukumeze ngokocansi uMpho ngaphandle kwemvume kaMpho noma kaJabu.

Ukuzihlasele ngokocansi okuphoqiwe kwenzeka uma u-Lee ephoqa uMpho –

1. ukuthi ashaye indlwabu,
2. enze into ezomqhanyelisa noma eyehlisa isithunzi, noma
3. afake okuthile ezithweni zakhe uqobo noma edidi lakhe,
4. ngaphandle kwemvume kaMpho.

#### **Qaphela:**

U-Lee ngeke asebenzise umshado wakhe noMpho njengokuzixolela ekumdlwenguleni noma ekuhlasele ngokocansi uMpho (isigaba 56).

## Amanye amacala ezocansi enziwa kwabadala

- Ukuphoqa/ukwenza umuntu omdala abone ubugebengu bezocansi, izenzo zocansi noma ukushaya indlwabu ngaphandle kwemvume (isigaba 8)
- Ukuvezela noma ukukhombisa izitho zangasese umuntu omdala, ididi noma amabele owesifazane kumuntu omdala ngaphandle kwemvume (isigaba 9). Inqubo yesiko esemthethweni ingavikela kuleli cala.

Amacala afanayo enzeka uma izenzo ezinjalo zenziwa ezinganeni noma abantu abakhubazeke ngokwenqondo.

UMthetho lona wesula ubugebengu bomthetho wemvelo wokuya ocansini nesihlobo segazi, ukuya ocansini nesilwane kanye nokuhlukumeza ngokocansi isidumbu ufake izihlinzeko zomthetho ezintsha esikhundleni sawo.

'ukuya ocansini nesihlobo' – ukuya ocansini kwabantu abahlobene kakhulu ukuthi bangaganana

'ukuya ocansini nesilwane' – ukuya ocansini komuntu nesilwane

## Ukuya ocansini nesihlobo (isigaba 12)

Abantu *abaya ocansini ngokuvumelana* bengenza icala lokuya ocansini nesihlobo uma behlobene:

- Ngokwegazi
  - Okhokho noma noma izizukulwane (izingane) ezizalanayo ngqo (isb. umzali nengane, umkhulu nomzukululu);
  - Izihlobo zegazi, uma oyedwa wezihlobo ehlobene nokhokho oyizalwane ezingeni lokuqala (okuyisizukulwane esisodwa) [isb. Umfowabo nodadewabo, umalume nomshana]. Lokhu akusebenzi kubazala bokuqala ngoba abahlobene ezingeni lokuqala.
- Ubuhlobo (abasemzini)
  - Ubuhlobo ngokomshado owaziwayo ngokulandelana okwenyukayo nokwehlayo uma umshado uphela ngesehlukaniso noma ngokufa (isb. Indoda nomkhwekazi wakhe wangaphambilini noma intombi yasemzini). Lokhu akusebenzi ezelamanini sobeshade naye ngaphambilini.
- Ubudlelwano bengane engazalwa umzali othile kodwa ayithathe ibe ngeyakhe
  - Umzali ngeke aye ocansini nengane enjalo kodwa yona ingaya ocansini nesihlobo segazi somzali oyithathe wayenza eyakhe.

Ezimweni zokuya ocansini nesihlobo, izinhlangothi zombili zingabekwa icala lokuya ocansini kwezihlobo uma oyedwa wabo engaphansi kweminyaka engu-18, icala elinjalo elibekwe ingane kufanele ligunyazwe uPhiko Lukazwelonke Lwezokushushiswa Komphakathi.

## Ukuya ocansini nesilwane (isigaba 13)

U-Lee wenza icala lokuya ocansini nesilwane uma –

- U-Lee ebeka isitho sakhe sangasese emlonyeni, ezithweni zangasese noma edidi lesilwane;
- U-Lee ufaka isitho sangasese zesilwane emlonyeni wakhe, esithweni sangasese noma edidi noma
- U-Lee ushayisa isilwane indlwabu. Lokhu akuthathwa njengecala uma indlwabu ishayelwa ukuzalisa isilwane noma izizathu zezesayenzi.

## Isenzo socansi nesidumbu (isigaba 14)

Akukho muntu ovunyelwe ukwenza noma yisiphi isenzo socansi nesidumbu somuntu (umzimba ofileyo). Kuyicala futhi ukuhlukumeza isidumbu noma ukucekela phansi ithuna (isb. ukukhahlela isidumbu noma itshe lethuna).

# Amacala okuya ocansini nezingane

Ingane eneminyaka engaphansi kwengu-12 isencane kakhulu ukuthi inganika imvume yesenzo socansi (isigaba 57). Isenzo socansi nengane engaphansi kweminyaka engu-12 kuyicala nje ngokwakho kanti kuchazwa njengokudlwengula noma ukuhlasela ngokocansi.

Iminyaka yemvume umuntu anganika ngayo imvume yesenzo socansi ingu emantombazaneni nakubafana. Lokhu kusho ukuthi ingane eneminyaka engu-16 ubudala noma ngaphezulu, inganikeza imvume yesenzo socansi. Lapho inganikezanga khona imvume, icala lokudlwengula noma lokuhlasela ngokocansi lingavulwa.

Esimweni lapho ingane iphakathi kweminyaka engu-12 nengu-16, kunezindlela ezimbili zokubhekana nalokhu:

1. Uma ingane inikeze imvume yesenzo socansi ngokuzithandela, olunye uhlangothi lungabekwa icala lokungena enganeni leyo ngokuvumelana noma ngokuhlasela ingane leyo ngokocansi ngokuvumelana.
2. Uma ingane ingavumelanga isenzo socansi, isephulamthetho kufanele sibekwe icala lokudlwengula noma lokuhlasela ngokocansi.

## Ukungena enganeni ngokuvumelana eneminyaka ephakathi kwengu-12 nengu-16 (isigaba 15) (kuchazwa futhi ngokuya ocansini nengane engaphansi kweminyaka yokuvuma isenzo socansi)

Leli cala lenzeka ngesikhathi u-Lee enza isenzo sokungena enganeni eneminyaka engu-12 nengu-16 (uMpho), lapho ingane inikeze khona 'imvume' kodwa isencane kakhulu ukuthi ingaya ocansini ngesivumelwano.

Lesi sigaba soMthetho sithatha indawo yesahluko 14(1) *soMthetho Wamacala Ezocansi* omdala, sifaka abesilisa nabesifazane bese sikhapha iminyaka eyehlukene yemvume kubafana nasemantombazaneni.

Uma izinhlangothi zombili kuyizingane, bangabekwa icala bobabili – icala elinjalo elibekwe ingane kufanele ligunyazwe uPhiko Lukazwelonke Lwezokushushiswa Komphakathi. Lapho izinhlangothi kuzingane zodwa, akufanele ziboshwe kodwa kufanele zinikwe isamanisi lokuthi zivele enkantolo

emva kokuba icala seliphenywe kahle futhi noMqondisi Kazwelonke ethe icala aliqhubeka.

Incazelo engaba khona lapha noma ukuzivikela ecaleni ukuthi uMpho ukhohlise u-Lee nokuthi ukholwe ukuthi uMpho ubengaphezu kweminyaka engu-16.

### **Qaphela:**

Noma ngabe uMpho kungenzeka ukuthi usivumile isenzo socansi, imvume kungenzeka ukuthi ingabi khona ngenxa yencazelo eyeluliwe yokunika imvume yesenzo socansi (bheka ikhasi 4). Ezimweni ezinjalo, u-Lee kufanele abekwe icala lokudlwengula hhayi icala lokuya ocansini ngokuvumelana nengane eneminyaka ephakathi kwengu-12 nengu-16.

## **Ukwephula isivumelwano socansi nengane eneminyaka engu-12 nengu-16 (isigaba 16)**

Ubugebengu obusha lobu. Leli cala lenzeka ngesikhathi u-Lee enyathela amalungelo aphaathelene nezocansi engane (uMpho) 'ngemvume' yaleyo ngane.

Ngenxa yencazelo ebanzi yokunyathela amalungelo aphaathelene nezocansi (bheka ikhasi 6), lesi sihlinzeko sibizwa "ngomthetho wokuqabula". Okwazekayo, izingane zombili ezingaphansi kweminyaka engu-16 eqabula ngemvume ingabekwa icala ngaphansi kwalesi sigaba.

Uma izinhlangothi zombili kuzingane, zingabekwa icala kodwa kuphela uma lokhu kugunyazwe uPhiko Lukazwelonke Lwezokushushiswa Komphakathi, nokwelulekwa Imiyalelo Kazwelonke.

Incazelo engaba khona noma ukuzivikela kulobu bugebengu:

- Ukuthi uMpho ukhohlise u-Lee nokuthi ubekholwa ukuthi uMpho ubengaphezu kweminyaka engu-16 noma
- Izinhlangothi zombili izingane futhi umehluko phakathi kweminyaka yazo ingaphansi kweminyaka engu-2.

**Qaphela:**

UMnyango Wezobulungiswa uthi isigaba 15 no-16 zihlose kakhulu ukwenza izenzo zocansi zibe ubugebengu obenziwa abantu abadala ezinganeni. Umnyango uthi lezi zigaba zihlose ukuthola ukuhlukumeza ngokocansi, hhayi ukwenza ubugebengu lapho izingane zilinga ezocansi.

## Ukuxhashazwa ngokocansi kwezingane (isigaba 17)

Lobu ubugebengu obusha kanti busebenza kuzo zonke izingane ezingaphansi kweminyaka engu-18. Akusho lutho ukuthi ingane (uMpho) usivumile noma cha isenzo socansi.

'ukuxhaphaza' – ukusebenzisa omunye umuntu ngendlela engafanele ukuze uzuze.

"ukwenza okuthile ukuze uthole imali noma omunye umvuzo, ukusiza noma isinxephezelo" – ukwenza okuthile ukuze uthole imali, izipho noma olunye usizo

Lobu bugebengu benzeka ngaphansi kwezimo eziningi:

**Ukuxhaphaza ingane ngokocansi:** Uma u-Lee *esebenzisa izinto ezenziwa ingane* ngenhloso (uMpho) enzela ukuthola imali noma omunye umvuzo, usizo noma isinxephezelo kuMpho noma uJabu ukuze enze isenzo socansi noMpho.

Isibonelo: U-Lee ufuna ukuya ocansini nengane (uMpho) bese ekhokhela uMpho noma omnakekelayo (uJabu) imali yalokhu.

**3. Ukubandakanyeka ekuxhaphazeni ingane ngokocansi:** U-Lee *uhlinzeka izinto ezenziwa ingane* (uMpho) ngenhloso yokwenzela ukumxhaphaza ngokocansi komunye umuntu (uJabu) ukuze athole imali noma omunye umvuzo, usizo noma isinxephezelo ku-Lee, uMpho noma omunye umuntu:

- Ukwenzela ukuthengisa ucansi noMpho, uJabu ukhokhela u-Lee.
- Ngokuthi u-Lee ameme noma ancenge uMpho ukuthi avumele uJabu enze isenzo socansi noMpho;
- Ngokuthi u-Lee abambe iqhaza, akhuthaze noma aqhakambise isenzo socansi noMpho esenziwa uJabu;
- Ngokuthi u-Lee enze kutholakale, anikele noma ukubambisa iqhaza uMpho ukwenzela ukuthola ikhomishini yesenzo socansi noMpho esenziwa uJabu;
- Ngokuvalela, ngokusebenzisa izinsongo, indluzula, impoqo, amanga,

ukusebenzisa amandla ngendlela engafanele, uMpho ukuze uJabu enze isenzo socansi noMpho.

Isibonelo: U-Lee uphuza lapho kuphuzwa khona utshwala. Uthi noma ubani angaya ocansini nengane (uMpho) uma ezokhokha. U-Lee bese etshela uMpho ukuthi aye ocansini noJabu.

4. Ukuqhubela phambili ukuxhaphaza ingane ngokocansi: Umuntu –
  - Ovumela ngenhloso isenzo socansi esenziwa uJabu noMpho ngesikhathi engumnakekeli, umzali noma umbheki kaMpho;
  - Ongumnikazi, oqashe noma ohlala endlini futhi avumele ngenhloso ukuthi indlu isetshenziselwe ukuthi uJabu enze icala locansi noMpho.

Isibonelo: U-Lee akasebenzi futhi uthola imali endodeni athandana nayo ukuze athole izidingo zakhe. Uyazi ukuthi indoda athandana nayo iya ocansini nengane yakhe kodwa akenzi lutho ukumyekisa.

5. Ukuzuza ekuxhaphazeni ingane ngokocansi: U-Lee uthola umvuzo wemali, usizo noma isinxephezelo ngenhloso uma uJabu enza isenzo socansi noMpho.

Isibonelo: U-Lee uyazi ukuthi ingane yakhe iya ocansini noJabu ukuze athole imali. U-Lee uyakukhuthaza lokhu ngoba uthola imali ngengane yakhe.

6. Ukukhuthaza izinkambo lapho ingane iya khona ocansini: Umuntu noma inkampani –
  - Owenzela uJabu amalungiselelo ohambo ngenhloso yokwenza kube lula ukuthi uJabu enze isenzo socansi noMpho noma
  - Aphrinte noma ashicilele noma yiluphi ulwazi olukhuthaza izenzo zocansi noMpho.

## Ukucijela izingane ucansi (isigaba 18)

Lobu ubugebengu obusha kanti buqonde ukuvikela izingane ezineminyaka engaphansi kwengu-18 ekuxhashazweni ngokocansi. *Ukucija ingane ngokocansi* kuqondise enqubeni yokulungiselela noma ukwenza ukuthi ingane ilungele ukubamba iqhaza esenzweni socansi. Ukucija ingane kuvame ukwenzeka isikhathi eside. Ngokuvamile, isephulamthetho siqala ngokuzama ukuba umngani wengane bese sidlala imidlalo eyimfihlo nengane ukubona ukuthi ngabe ingane izobudalula yini ubugebengu noma cha. Ubungane bese buba obunothando kakhulu, bese bedlulela ezenzweni zocansi. Mhlawumbe kwesinye isikhathi ukucija ingane kubandakanya ukukhombisa ingane imifanekiso yezocansi nokuthengela ingane izipho.

1. Ukukhuthaza ukucija ingane ngokocansi: Kulapho u-Lee -
  - Enza, ekhiqiza, ephethe noma esabalalisa umbhalo, isishicilelo noma ifilimu okuhlose ukukhuthaza isenzo socansi noMpho;
  - Enikeza noma ekhombisa imifanekiso yocansi olubandakanya ingane noma ifilimu noma isishicilelo kuJabu ngenhloso yokusiza uJabu ukuthi enze isenzo socansi noMpho; noma
  - Enza amalungiselelo omhlangano noma ukuxhumana phakathi kukaJabu noMpho noma ngayiphi indlela ngenhloso yokuthi uJabu uzokwenza isenzo socansi noMpho.

Isibonelo: U-Lee une-website ye-internet lapho abantu abadala bengahlangana khona nezingane ukuzilungiselela ubudlelwano bocansi.

2. Ukucija ingane ngokocansi: Kulapho u-Lee -
  - Enikeza noma ekhombisa ingane (uMpho) –
    - Umbhalo owenzelwe ukusetshenziswa esenzweni socansi;
    - Imifanekiso yocansi ebandakanya ingane noma imifanekiso yocansi;
    - Isishicilelo noma ifilimu ngenhloso yokukhuthaza uMpho ukuthi enze isenzo socansi.
  - Enze noma achaze isenzo noMpho noma ekhona ngenhloso yokukhuthaza noma ukuncenga uMpho ukuthi –
    - Enze isenzo socansi no-Lee noma noJabu;
    - Enze isenzo sokushaya indlwabu kukhona u-Lee noma uJabu;
    - Ebukhoneni buka-Lee noma bukaJabu ngesikhathi enza isenzo socansi noma eshaya indlwabu;
    - Ukubona imifanekiso yocansi ebandakanya ingane noma imifanekiso yocansi;

- Ukusetshenziselwa imifanekiso yocansi;
- Ukuvezela u-Lee noma uJabu umzimba ngendlela yokuthi kwehle isithunzi sikaMpho.
- Ukuhlela imihlangano noma ukuxhumana noMpho, noma ngayiphi indlela, noma kuphi emhlabeni, ngenhloso yokuthi u-Lee uzokwenza isenzo socansi noMpho.
- Ukumema, ukuyenga noma ukuphoqa uMpho ukuthi ahambe ayohlangana no-Lee ngenhloso yokwenza isenzo socansi noMpho.

## Ukuphoqa noma ukwenza izingane zibone izenzo zocansi (isigaba 21)

Kuwubugebengu ukubukisa ingane isenzo socansi ngenhloso ngaphandle kwemvume yengane. Icala leli noma ngabe isenzo lesa asenzelwanga ukuzithokozisa ngokocansi kuka-Lee.

## Ukuvezela izingane izitho zangasese, ididi noma amabele (isigaba 22)

Kuwubungebengu ku-Lee ukuvezela ingane (uMpho) izitho zangasese, ididi noma amabele owesifazane ka-Lee noma kaJabu ngenhloso.

Icala leli noma ngabe isenzo lesa asenzelwanga ukuzithokozisa ngokocansi kuka-Lee noma uJabu.

Kuwukuzivikela ecaleni noma incazelo ingaba khona uma isenzo esinjalo senzewe isiko elithile elisemthethweni.

# Amacala ocansi enziwa kubantu abakhubazeke ngokwenqondo

UMthetho uzama ukuvikela abantu abakhubazeke ngokwenqondo njengeqoqo labantu abasenzozini yokuxhashazwa ngokocansi.

NgokoMthetho, umuntu okhubazeke ngokwenqondo kusho umuntu othintwa noma yikuphi ukukhubazeka kwenqondo, kubandakanya ukungasebenzi ngendlela noma ukukhubazeka komqondo, ngale ndlela yokuthi, *ngesikhathi sobugebengu*, –

- Ubengaqondi uhlobo nemiphumela yesenzo socansi;
- Ubeqonda isenzo socansi kodwa engakwazi ukuthatha isinqumo esifanele esakhelwe kulokhu kuqonda;
- Ubengakwazi ukwenqaba isenzo socansi; noma
- Ubengakwazi ukukhombisa ukuthi akafuni ukuba yingxenywe yesenzo socansi.

NgokoMthetho, abantu abakhubazeke ngokwenqondo abakwazi ukuvumela izenzo zocansi (isigaba 57). Lesi sigaba sisebenza kuphela kubantu abakhubazeke ngokwenqondo njengoba kuchazwe eMthethweni. Abantu abaningi bangaba nesifo senqondo noma ukukhubazeka kodwa baqonde uhlobo nemiphumela yesenzo socansi ngakho bathathe isinqumo sokuvumela izenzo zocansi. Kufanele kuhlonishwe ukuthi abantu abakhubazeke ngokwenqondo bangavuma futhi bangayinikeza imvume yocansi – kuyoba icala locansi kuphela uma umuntu engazivumeli ngokwakhe isenzo socansi.

Lobu bugebengu obulandelayo obusebenza kubantu abakhubazeke ngokwenqondo buyafana nalobo obusebenza ezinganeni:

- Ukuxhashazwa ngokocansi kwabantu abakhubazeke ngokwenqondo (isigaba23)
- **Ukucijela abantu abakhubazeke ngokwenqondo ucansi** (isigaba 24)

Kuyodingeka kube nobufakazi bokuthi ummangali ukhubazeke ngokwenqondo ukuze kusebenze lama cala. Lokhu kusho ukuthi kufanele kutholakale umbiko ovela kungoti (usohlalakahle, isazi sokusebenza kwenqondo noma udokotela wenqondo) futhi achaze uhlobo nezinga lokukhubazeka kwenqondo nokuthi ummangali angakwazi yini ukunika imvume.

# Imifanekiso yezocansi

'**Imifanekiso yezocansi**' umfanekiso wocansi noma incazelo ebhalwe phansi yesenzo socansi noma womuntu okuhloswe ngaye ukuthi aqhanyelise.

'Imifanekiso yocansi ebandakanya ingane' umfanekiso wocansi noma incazelo ebhalwe phansi yesenzo socansi noma womuntu lapho umuntu eneminyaka engaphansi kwengu-18. Akunandaba noma umfanekiso wenzelwe ukuqhanyelisa.

Umfanekiso wocansi ubandakanya noma yimuphi umfanekiso noma incazelo yomuntu–

- Obamba iqhaza ebugebengwini bocansi;
- Owenza isenzo sokungena kumuntu noma ukunyathela amalungelo aphantsi nezocansi
- Ukushaya indlwabu;
- Okhombisa izitho zangasese noma amabele owesifazane omuntu onjalo osesimweni sokuqhanyelwa;
- Okhombisa izitho zangasese noma ididi lomuntu onjalo kungafanele;
- Ukwenza izenzo zokukhumbuzisa umuntu ngocansi noma ukubhekisa ocansini ngendlela engafanele;
- Ukwenza noma ukuba yinto yokuzwisa ubuhlungu (ukuzwisa ubuhlungu ngenhloso komunye umuntu) noma ezizwisa ubuhlungu (ukuzwisa ubuhlungu ngenhloso) ngozocansi;
- Ukukhombisa noma ukuchaza umzimba womuntu ngendlela yokuthi, kuleso simo, kuphambana noma kwehlisa isithunzi noma ubuqotho ngokocansi kwalowo muntu noma omunye umuntu.

'**Ukuzwisa ubuhlungu**' – ukuthola injabulo noma ukujabulela ucansi ngokuzwisa ubuhlungu omunye

'**Ukuzwisa ubuhlungu**' – ukuthola injabulo noma ukujabulela ucansi ngokuhlukunyezwa noma ngokuba ngaphansi komuntu ngamandla

UMthetho wenza ubugebengu obuningi obumayelana nemifanekiso yezocansi:

- Ukuvezela noma ukukhombisa **imifanekiso yezocansi** kumuntu omdala, ngemvume noma ngaphandle kwayo (isigaba 10)

- Ukuvezela noma ukukhombisa **imifanekiso yezocansi** enganeni, ngemvume noma ngaphandle kwayo (isigaba 19)
- Ukusebenzisela izingane ukuhlomula noma ukuhlomula emifanekisweni yezocansi ebandakanya ingane (isigaba 20)
- Ukwenza noma ukukhombisa **imifanekiso yezocansi** kubantu abakhubazekile (isigaba 25)
- Ukusebenzisela abantu abakhubazeke ngokwenqondo imifanekiso yezocansi noma ukuhlomula ekubasebenziseni (isigaba 26).

*UMthetho Wezamafilimu Nezishicilelo (owunombolo 65 wango-1996)* uchaza 'imifanekiso ebandakanya ingane' ngokufaka noma yimiphi imifanekiso noma iyiphi incazelo yomuntu oneminyaka engaphansi kwengu-18

1. Ukwenza isenzo socansi;
2. Ukubamba iqhaza, noma ukusiza omunye umuntu ukuthi abambe iqhaza, esenzweni socansi; noma
3. Ukukhombisa noma ukuchaza umzimba, noma izingxenye zomzimba, zomuntu onjalo ngendlela yokuthi noma ezimweni, kuleso simo, kugcina sekuwukuxhashazwa ngokocansi.

Kuwubugebengu ukuphatha, ukwenza, ukushushumbisa, ukuthola noma ukusabalalisa ifilimu noma isishicilelo esinemifanekiso yezocansi ebandakanya ingane noma ukukhangisa imifanekiso yezocansi ebandakanya ingane noma ukuxhashazwa kwezingane ngokocansi. Kungumsebenzi kanoma ubani owazi, noma osola ukuthi kunalobu bugebengu abubike emaphoyiseni (isigaba 27 *soMthetho Wezamafilimu Nezishicilelo*).

**Qaphela:**

Ungabika imifanekiso yezocansi ebandakanya ingane kwi-intanethi:  
<http://www.fpbprochild.org.za/ReportAbuse.aspx>

# Abantu abadala abathengisa umzimba

Imithetho eminingi ephathelene nokuthengisa umzimba kwabantu abadala *iseMthethweni Wamacala Ezocansi owunamba-23* wango-1957 omdala eyenza izindlu zobufebe zibe yicala, ukubambela kanye nesenzo socansi ukuze uzube imali. Amaphoyisa avame ukubopha abathengisimzimba ngokwemithetho kamasipala, isb. ukwehla wenyuka.

*UMthetho Ochibiyelwe Wenqubo Yokujeziswa Kwezaphulamthetho (Amacala Ezocansi)* manje usuwenza icala kumakhasimende akhokhela ucansi. Kubandakanya lama cala alandelayo:

- Ukugcina indlu yobufebe (isigaba 2) nezinto ezihambisana nakho
- Ukubambela (isigaba 10)
- U-Lee wenza ukuthi uMpho aye ocansini nanoma yimuphi umuntu, noma wenza ukuthi abe umthengisimzimba noma ahlale endlini yobufebe.
- Ukuvalela ngenhloso yokuyisa umuntu ocansini okungekho emthethweni (isigaba 12)
- U-Lee ubamba uMpho engafuni endlini yobufebe noma endaweni ethile ukuze indoda iye naye ocansini.
- Ukusiza ukuthengisa umzimba (isigaba 12A)
- Umuntu, owenzela umvuzo, asize umuntu ukuthi axhumane nomunye umuntu ukuze baye ocansini noma benze isenzo esingamahloni ukwezela ukuthola umvuzo.
- Ukuheha ekwenziseni izenzo ezingcolile (isigaba 19)
  - Umuntu oheha noma onxenxa endaweni yomphakathi enzela izinto zokungcola.
  - Umuntu ogqoke ingubo engamahloni noma oma ngandlela thile kunoma yimuphi umnyango noma iwindi endaweni ebonakalayo kunoma iyiphi indawo yomphakathi noma indawo umphakathi ofinyelela kuyo.
- Ukuphila ngemali yomsebenzi wocansi (ukuthengisa ngomzimba) noma ukusiza ekuthengiseni izenzo zokugcola (isigaba 20)
  - Noma yimuphi umuntu ophila ngemali yokuthengisa umzimba azi.
  - Noma yimuphi umuntu osiza noma ngayiphi indlela noma othola umvuzo wokukhipha umyalo okhishwa yinoma yimuphi umuntu

wanoma yisiphi isenzo sokungcola nomunye umuntu.

- Noma yimiphi umuntu oneminyaka engu-18 noma ngaphezulu oya ocansini noma owenza isenzo sokungcola nomunye umuntu ukuze athole umvuzo.
- Noma yimuphi umuntu oneminyaka engu-18 noma ngaphezulu owenza isenzo sokungcola nomunye umuntu phambi kwabantu.

Lezi zihlinzeka ezingenhla kufanele zisetshenziswe kwabesilisa nabesifazane.

## Ukuya ocansini nabantu abadala (isigaba 11)

*UMthetho Ochibiyelwe Wenqubo Yokujeziswa Kwezaphulamthetho (Amacala Ezocansi)*. Sekuthathwa njengecala manje ukuthi umuntu aye ocansini nomuntu oneminyaka engu-18 noma ngaphezulu ukuze uthole imali noma omunye umvuzo, usizo noma isinxephezelo kumuntu noma kumuntu wesithathu ukwenzela ukwenza isenzo socansi nalowo muntu.

### **Qaphela:**

Ikhomishana yokwenza kabusha umthetho waseNingizimu Afrika ibuyekeza umthetho osebenza njengamanje womsebenzi wocansi. Ukuze uthole olunye ulwazi yana kwi-website yabo ku: <http://salawreform.justice.gov.za>.

# Ukushushumbisa abantu kwamanye amazwe ngenhloso yokubasebenzisa

iNingizimu Afrika iye yasayina *imigomo yokuziphatha Yezizwe Ezihlangene ukuvikela ukushushunjiswa kwabantu kwamanye amazwe* futhi izihlinzeko zale migomo yokuziphatha yamazwe omhlaba zibophezela ngokomthetho iNingizimu Afrika.<sup>1</sup> Lokhu kusho ukuthi iNingizimu Afrika inomsebenzi wokuphoqa ukusebenza kwale mithetho yamazwe omhlaba ekushushumbiseni abantu kwamanye amazwe.

Njengamanje, ikhomishana yokwenza kabusha umthetho waseNingizimu Afrika ibheka ekubuyekezeni umthetho obhekelela ukushushunjiswa kwabantu. Okwamanje, *UMthetho Ochibiyelwe Wenqubo Yokujeziswa Kwezaphulamthetho (Amacala Ezocansi)* unezihlinzeko zesikhashana eziphathelene ngqo nokushushunjiswa kwabantu ukwenzela ucansi. Ukushushumbisa izingane kukhulunywa ngakho eSahlukweni sika-18 *soMthetho Wezingane (owunombolo 38 wango-2005)*.

## Ukushushumbisa abantu ukwenzela ucansi

Izigaba sesikhashana lesi *eMthetweni Ochibiyelwe Wenqubo Yokujeziswa Kwezaphulamthetho (Amacala Ezocansi)* owenza kusebenze imigomo yokuziphatha ye-UN okwesikhashana kuze kube ukuthi kuphasiselwa iNingizimu Afrika umthetho onzulu.

'ukushushumbisa abantu' kulesi sigaba, kubandakanya ukunikezela, ukuqasha, ukubambela, ukubamba, ukususa, ukuthutha, ukwedlulisa, ukufihla, ukuthengisa, ukulahla noma ukwemukela umuntu, ngaphakathi noma ngaphesheya komngcele waseRiphabhuliki,

1. Ngokusonga ngokulimaza;
2. Ngokusonga ukusebenzisa indluzula, ukwesabisa nezinye izindlela zempoqo;

<sup>1</sup> *Imigomo yokuziphatha ukuvikela, ukucindezela nokujezisa ukushushunjiswa kwabantu, ikakhulukazi abesifazane nezingane, ukwelekelela umbuthano weNhlangothi Yezizwe elwa nobugebengu obuhleliwe obubandakanya imali, GS res 55.25, annex II, 55 UN GAOR Supp. (No 49) at 60, UN Doc A/45/49 (Vol I) (2001)*

3. Ngokuthumba;
4. Ngenkohlakalo;
5. Ngokukhohlisa noma ngokwenza okungenaqiniso;
6. Ukusebenzisa amandla ngokungeyikho noma ukungakwazi ukuzivikela komuntu, ngendlela yokuthi ummangali uvimbelekile ukukhombisa ukungathandi kwakhe noma ukwenqaba ukushushunjiswa;
7. Ukunika noma ukwemukela inkokhelo, isinxephezelo, imivuzo noma usizo ukwenzela noma nhloboni yokuxhaphaza, ukucijela ucansi noma ukuhlukumeza ngokocansi komuntu onjalo.

Umthetho wenqaba -

- Ukushushumbisa abantu ukwenzela ucansi [isigaba 71(1)]
- Ukubandakanyeka ekushushumbisweni kwabantu ukwenzela ucansi [isigaba 71(2)]

Umuntu owenza icala ngoba eshushunjiswa ngeke abekwa icala [isigaba 71(5)]. Isibonelo, uma uMpho eshushunjiswa eqa umngcele waseNingizimu Afrika kanti akanawo amaphepha okuhamba asemthethweni, ngeke abekwe icala eliphathelene nokuya kwelinye izwe.

Isigaba sibuye sikhulume ngokushushiswa kwezithwali ezikhokhelwayo (amabhanoyi, izikebhe) okubandakanyeka ekushushumbisweni kwabantu.

## Ukushushumbisa izingane

*NgokoMthetho Wezingane (owunombolo 38 wango-2005),*

- 'ukuxhaphaza ngokocansi okubandakanya imali', okumayelana nengane, kusho-
  - Ukubambela noma ukuthola ingane ukuthi yenze izenzo zocansi ukuze uthole imali noma omunye umvuzo, kubandakanya izenzo zokuthengisa ngomzimba noma imifanekiso yezocansi, kungabhekwa ukuthi ngabe lowo mvuzo unikezwa umbambeli, ingane, umuntu onakekela ingane, noma omunye umuntu; noma
- Ukushushumbisa ingane ukuyoyisebenzisela imisebenzi yocansi, kubandakanya ukuthengisa ngomzimba noma imifanekiso yezocansi.
- **'ukushushumbisa'**, okumayelana nengane-
  - Kusho ukubambela, ukuthengisa, ukunikezela, ukuthutha, ukwedlulisa, ukufihla noma ukwemukela izingane, ngaphakathi noma ngaphesheya komngcele waseRiphabhuliki -

- Noma ngayiphi indlela, kubandakanya ukusebenzisa ukusonga, indluzula noma impoqo noma ezinye izindlela zempoqo, ukuthumba, inkohlakalo, ukukhohlisa, ukusebenzisa amandla ngendlela engafanele noma ukunika noma ukuthola inkokhelo noma izinsizakalo ukuze uthole imvume yomuntu ophethe ingane; noma
- Ngoba ingane engakwazi ukuzivikela, ukwenzela ukuyixhaphaza; futhi
- Okufaka ukuthatha ingane okungeyona eyakho uyenze eyakho ngendlela engekho emthethweni.

*UMthetho Wezingane* wenqabela (uvimbela) ukushushumbiswa kwezingane (isigaba 284) kanye nokusiza ekushushumbiseni izingane (isigaba 285). Akukho muntu noma inkampani engashushumbisa ingane noma ivumele ukushushunjiswa kwengane.

Uhulumeni unomsebenzi wokusiza ingane ewumhlukunyezwa wokushushunjiswa (isigaba 286). Noma yimuphi umzali obandakanyeka ekushushunjweni kwengane yakhe angalahlekela amalungelo akhe obuzali bese ingane ithathwa kuye (isigaba 287).

*UMthetho Wezingane* unikeza iziphathimandla ezibhekene nokuphuma kwabantu ezweni, amaphoyisa, osonhlalakahle noma abezempilo abahlangabezana nabahlukunyezwa bokushushunjiswa umsebenzi wokuthi bayalele ingane kusonhlalakahle ukuthi aphenye (isigaba 288).

# Ukubika okuyimpoqo amacala ocansi

Isigaba 54 soMthetho sithi noma yimuphi umuntu onolwazi lobugebengu bocansi obenziwe enganeni noma umuntu okhubazeke ngokwenqondo kufanele abubike. Ukubika okuyimpoqo kobugebengu bezocansi kungaveza ubugebengu obuningi bezocansi obufihlekile njengamanje emiphakathini yethu. Ukubika okuyimpoqo kungabuye kuthene amandla izingane nabanye ekutholeni ukunakekelwa ngokwezempilo noma ezinye izinsiza.

## *Ngabe ubika nini?*

Uma kukhona noma yiluphi ulwazi lokuthi kunobugebengu bezocansi obenzekile enganeni noma kumuntu okhubazeke ngokwenqondo (njengoba kuchazwe eMthethweni).

## *Ubani okufanele abike?*

Noma ubani.

## *Kufanele kubikwe kubani?*

Emaphoyiseni.

Eminye iMithetho inemisebenzi efanayo yokubika ukuhlukunyezwa. Izigaba ezingezansi zazingakasebenzi ngesikhathi sokubhala.

## Isigaba 110(1) soMthetho Wezingane

### Kubikwa nini?

Uma usola ukuthi ingane iye yahlukunyezwa ngendlela yokuthi ilimale emzimbeni, ihlukunyezwe ngokocansi noma iyekelelwe ngenhloso.

### Ubani okufanele abike?

Isiphathimandla sokuhlunyelelwa kwezimilo; umuntu owelapha ngendlela yokuthi amakhambi awasebenzisa esigulini akhombisa izimpawu zesifo; isiphathimandla esibhekene nokuphuma kwabantu ezweni; umhloli wezemisebenzi; isazi somthetho; udokotela; udokotela wamazinyo; umbelethisi; umhlengikazi; umfundisi wasesontweni; umholi wezenkolo; umelaphi wenqondo ehlukumezekile noma umzimba olimele; umelaphi owelapha ngokuvocavoca umzimba wesiguli; umelaphi wokukhuluma; isazi sokusebenza kwenqondo; umsebenzi wezinsiza zezehlalakahle; usonhlalakahle; uthisha; umelaphi wendabuko; umholi wendabuko; ilungu labasebenzi noma umsebenzi oyivolontiya endaweni esengxenywe yokunakekela, indawo okuhlanganelelwa okuthile kuyo ngezikhathi ezithile noma indawo yokunakekelwa kwezingane noma intsha.

### Kufanele kubikwe kubani?

Inhlangano ejutshelwe ukuvikela izingane njenge-Child Line, usonhlalakahle noma iphoyisa.

## Isigaba 110(2) soMthetho Wezingane

### Kubikwa nini?

Uma usola ukuthi ingane iyahlukunyezwa noma idinga ukunakekelwa nokuvikeleka.

### Ubani okufanele abike?

Noma ubani.

### Kufanele kubikwe kubani?

Usonhlalakahle, inhlangano ejutshelwe ukuvikela izingane noma iphoyisa.

## Isigaba 26 soMthetho Wabantu Abadala owunombolo 13 wango-2006

Kubikwa nini?

Uma usola ukuthi umuntu omdala uye wahlukunyezwa noma ulimale ngokuphathelene nokuhlukunyezwa.

Ubani okufanele abike?

**Noma ubani.**

Kufanele kubikwe bani?

Usonhlalakahle noma iphoyisa.

# Izinqubo ezibhekene nokujeziswa kwezephulamthetho emacaleni ocansi

Kungaba lukhuni kakhulu kubahlukunyezwa bobugebengu bocansi ukufakaza enkantolo. *UMthetho Wenqubo Yokujeziswa Kwezephulamthetho owaziwa nge-Criminal Procedure Act (CPA)* uvumela ukuthi abahlukunyezwa bafakaze ngekhamera yevidiyo egunjini elingaphandle kwenkantolo noma bafakaze ngabanye abantu (ababizwa 'ngabakhulumeli') ezimweni ezithile. UMthetho uvumela ukuthi kuqale kwenziwe uhlaka lwemiyalelo yoPhiko Lukazwelonke Lokushushiswa Komphakathi olwaziwa nge-National Prosecuting Authority (NPA) okuhloswe ngawo ukunciphisa okanye ukuhlukumezeka kwesibili noma ukwethuka kakhulu emva kwesehlakalo, okwenzeka ngesikhathi umhlukunyezwa sekufanele abike ubugebengu bese ahlangebezane nobunzima nokwethuka kakhulu emva kwesehlakalo ukwenza lokhu.

## Ukufakaza ngekhamera yevidiyo ebizwa nge-CCTV

Inkantolo, ngokubona kwayo noma ngesicelo esifakwe umshushisi noma ufakazi, ikhiphe umyalo wokuthi ufakazi anganika ubufakazi nge-CCTV (ikhamera yevidiyo) (isigaba 158 se-CPA). Inkantolo kufanele ibheke ukuthi ngabe ukufakaza enkantolo kungadala umonakalo yini kufakazi. Umthetho uthi uma inkantolo yenqaba isicelo somshushisi enganeni engaphansi kweminyaka engu-14 ukuthi inikeze ubufakazi nge-CCTV, inkantolo kufanele ngokushesha inikeze izizathu zalokho kwenqaba.

Ukusebenzisa i-CCTV noma okokwedlulisa umyalezo kukagesi okunjalo enkantolo ukusiza noma yimuphi ummangali owethuke kakhulu emva kwesehlakalo noma ufakazi ukunika ubufakazi, akunandaba ukuthi uneminyaka emingaki. Abashushisi kufanele basebenzise i-CCTV kuwona onke amacala abo ezocansi.

## Umkhulumeli

Izinto ezenzeka enkantolo zingethusa kakhulu noma zesabise, ikakhulukazi izingane. Uma kubonakala sengathi ingane izoba nencindezi engafanele uma ifakaza enkantolo, inkantolo ingaqoka umuntu ongasebenza njengomkhulumeli phakathi kwengane nenkantolo (isigaba 170A se-CPA). Abakhulumeli bangasetshenziswa enkantolo noma umkhulumeli nengane bangaba kwelinye igumbi bakhulume nenkantolo nge-CCTV.

Abashushisi kufanele batshele ummangali noma ufakazi oyingane ukuthi bengasebenzisa lesi sinyathelo ukubasiza befakaze.

Ngaphambilini bekuyingane eneminyaka engaphansi kuka-18 ebinikeza ubufakazi ngomkhulumeli. Umthetho usuye wachibiyelwa manje ukuvumela umuntu oneminyaka engaphezu kuka-18 oneminyaka engaphansi kwengu-18 ngokwenqondo, ukuthi afakaze ngomkhulumeli.

Umshushisi kufanele afake isicelo enkantolo semvume yokusebenzisa umkhulumeli. Uma inkantolo yenqaba isicelo esinjalo, inkantolo kufanele inikeze isizathu sokwenqaba. Inkantolo ingahlehlisa udaba olulalelwayo uma umkhulumeli engekho.

# Ubufakazi emacaleni ezocansi

Akulula neze kummangali ecaleni lezocansi ukuthi afakaze ngobugebengu. Esikhathini esedlule, izinkantolo kanye nabameli babejwayele ukwethusa abamangali kakhulu bangabunaki ubufakazi babo kungenasizathu. UMthetho wenze imitheshwana ethile ngokuthi kufanele ubufakazi babamangali emacaleni ezocansi buphathwe kanjani manje ezinkantolo.

## Ubufakazi bezitatimende ezivumelanayo zangaphambilini (isigaba 58)

Umthetho wethu wemvelo ngaphambilini ubuvumela ubufakazi ummangali ecaleni lobugebengu bezocansi abutshela omunye umuntu mayelana nobugebengu bezocansi emva nje kwecala (umbiko wokuqala). Lo mthetho wawakhelwe enkolelweni endala yokuthi uma ummangali engabiki ngokushesha, noma emva kokudlwengula, abikele ngokushesha omunye umuntu, uqamba amanga (umthetho wesikhalo sokubanjwa kwesaphulamthetho). Umthetho manje uthi ubufakazi bezitatimende ezivumelanayo zangaphambilini ezenziwa ummangali zivumelekile, kodwa inkantolo ngeke ithathe ngokuthi ummangali uqamba amanga uma bungekho ubufakazi obunjalo.

## Ubufakazi bokulibazisa ekubikeni (isigaba 59)

Izinkantolo zivame ukuvusa izinhlonze kubamangali abangabubiki ubugebengu bocansi ngokushesha emva kokuthi benzekile. UMthetho uthi manje inkantolo ngeke isafinyelele esinqumeni sobude besikhathi sanoma yikuphi ukulibaziseka phakathi kwesikhathi okwenzeke ngaso ubugebengu nangesikhathi umhlukunyezwa ebike ngaso.

## Ukuqedwa komtheshwana wokwexwayisa (isigaba 60)

Ngaphambilini, izinkantolo bezisebenzisa isexwayiso ebufakazini bommangali ecaleni lobugebengu bezocansi. UMthetho ukubeka ngqo ukuthi inkantolo ngeke isebenzise isexwayiso ebufakazini bommangali ecaleni lobugebengu bezocansi ngokohlobo lwecala.

UMthetho, nokho, awukhulumi nomtheshwana wokwexwayisa mayelana nofakazi oyedwa nezingane.

## Ubufakazi bobunjalo bomuntu nomlando wangaphambilini wezocansi

UMthetho uchibiyela isigaba 227 se-CPA. Akukho bufakazi bomlando wangaphambilini wezocansi bommangali obungethulwa njengobufakazi enkantolo. Uma ummeli womsolwa efuna ukuletha ubufakazi ngokuya ocansini kommangali esikhathini esingaphambili, kufanele afake isicelo semvume enkantolo ukwethula lobo bufakazi. Inkantolo iyayalwa futhi ukuthi ingabuvumeli lobo bufakazi uma buhlose ukweseka isiphakamiso sokuthi ngenxa yohlobo lokuya ocansini kukammangali, kungenzeka ukuthi wavuma noma akakholakali. Abashushisi bayalelwe ukuthi baphikise noma yimuphi umbuzo omayelana nomlando wezocansi noma wokuya ocansini kukammangali.

# Ukunqunywa kwesikhathi lapho icala lingasekwedlula kuso

## Amacala aphantselene nomphakathi

Ngaphezu kokumangalela mayelana namacala obugebengu, ummangali angamangalela futhi isephulamthetho ngomonakalo odalekile (isinxephezelo). Lesi senzo sezomthetho kufanele silethwe ngaphakathi kweminyaka engu-3 kusukela ngosuku ukulimala (ukwepulwa komthetho) okwenzeka ngaso. *UMthetho wokunqunywa kwesikhathi lapho icala lingasekwedlula kuso (owunombolo 68 wango 1969)* usuye waguqulwa manje ukuze isikhathi seminyaka engu-3 yomonakalo okufanele inxeshezelelwe ubugebengu bezocansi, singaqali ngesikhathi ummangali engakakwazi ukufaka icala ngenxa yesimo senqondo noma ukusebenza kwenqondo yakhe.

### Isibonelo sokunqunywa kwesikhathi lapho icala lingasekwedlula kuso

U-Van Zijl ubhekene no-Hoogenhout, eNkantolo Enkulu Yokwedluliswa Kwamacala, 2004

Kuleli cala, ummangali wahlukunyezwa ngokocansi umalume wakhe kusukela ngo-1958 kwaze kwaba u-1967. Ngenxa yokuhlukunyezwa, ummangali wayengakwazi ukusola umalume wakhe ngakwenza kuyena. Ngo-1997, emva kokwelashwa, wayesekwazi ukubhekana nokuhlukunyezwa wase ebona ukuthi umalume wakhe kufanele asolwe. Wamangalela ngo-1999. Ngo-2004, iNkantolo Enkulu Yokwedluliswa Kwamacala yathi isikhathi esinqunyiwe lapho icala lingasenakwedlula kuso siqala ukusebenza uma odlwenguliwe esazi ngokuphelele mayelana nokudlwengulwa nokuthi ubani owakwenza.

## Amacala aphantselene nobugebengu

Emacaleni amaningi, ngaphandle-ke uma kucacisiwe emthethweni, ukushushiswa okuphantselene nobugebengu kufanele kwenziwe phakathi kweminyaka engu-20. Amacala afana nokubulala, ukuthumba nokweba ingane, akunamkhawulo onjalo.

Lobu bugebengu buye bafakwa *eMthethweni wenqubo yokujeziswa kwezephulamthetho (owunombolono 51 wango-1977)* umuntu angashushiselwa bona noma nini, ngisho emva kweminyaka engu-20:

- Ukudlwengula, ukudlwengula okuphoqiwe, ukushushumbisa, ukusebenzisela ingane noma umuntu okhubazeke ngokwenqondo imifanekiso yezocansi.

# Ukulahlwa yicala nokugwethshwa

## Ukuzama noma ukwenza itulo lokwenza icala lezocansi (isigaba 55)

Noma yimuphi umuntu -

- ozama,
- owenza itulo nomunye umuntu noma
- osiza, okhuthaza, onxenxa, ogqugquzela, osusa, oyala, obambela, okhipha izwi, oweluleka omunye umuntu

ukuthi enze icala lezocansi, enze ubugebengu ngokwakhe angathola isijeziso esifanayo nesomuntu olahwe yicala (otholwe enecala) lobugebengu.

## Izinqumo ezifanelekile (isigaba 261 soMthetho wenqubo yokujeziswa kwezephulamthetho)

Lapho umsolwa ebekwe icala lobugebengu obubodwa, bungatholakali ubufakazi ngesikhathi sokuthethwa kwecala, inkantolo kwesinye isikhathi ithola umsolwa enecala lobugebengu obuncane uma butholakala ubufakazi balobo bugebengu. Lokhu kubizwa ngesinqumo esifanelekile.

Lezi ezilandelayo izinqumo ezifanelekile noma ubugebengu obuncane ongagwethshelwa bona, esikhundleni sokudlwengula, ukudlwengula okuphoqiwe, ukuhlasela ngokocansi, ukuhlasela ngokocansi okuphoqiwe noma ukuzihlasela ngokocansi:

- Ukuhlasela ngenhloso yokulimaza umzimba okwaziwa nge-GBH;
- Ukuhlasela okujwayelekile;
- Ukuhlasela ngokocansi, ukuhlasela ngokocansi okuphoqiwe, ukuzihlasela ngokocansi okuphoqiwe;
- Ukuya ocansini nesihlobo segazi;
- Ukungena kumuntu ngokuvumelana noma ukuhlasela ngokocansi (izigaba 15 & 16).

## Izinhlelo zokwelapha njengohlobo lwesijeziso ezigebungwini zocansi

Ngokwesahluko 276A *soMthetho Wenqubo Yokujeziswa Kwezephulamthetho*, isijeziso somuntu oselahlwe yicala lobugebengu bezocansi sekubandakanya manje ukuya noma ukubamba iqhaza ohlelweni oluthile lokwelapha izigebengu zocansi. Umuntu olahlwe yicala kufanele akhombise ukuthi angakwazi ukusizakala ekwelashweni futhi akhokhele izindleko zohlelo.

*UMthethosivivinyo Wezobulungiswa Bengane*, uma usuphasisiwe ngokusemthethweni, uyovumela ukuthi kubhekwe enye indlela yokujezisa izingane ezibekwe icala emacaleni obugebengu. Lokhu kusho ukubheka enye indlela engasetshenziswa ezinganeni ohlelweni lwezobulungiswa olubhekene nokujeziswa kwezephulamthetho ngaphansi kwezimo ezithile kunezindawo zezokuhlunyelelisa kwezimilo noma izikhungo zokubavalela.

*UMthethosivivinyo Wezobulungiswa Bengane* wehlukanisa phakathi kwamacala eSheduli 1 (njengokuya ocansini nesilwane noma ukungena kumuntu ngokuvumelana), amacala eSheduli 2 (njengokuhlasela ngokocansi ngaphandle kokulimaza), namacala eSheduli 3 (njengokudlwengula, ukuhlasele ngokocansi lapho kwalinyazwa khona umzimba, ukuxhaphaza ngokocansi noma ukucija umuntu ngokocansi). Ukubheka enye indlela yokujezisa ngamacala eSheduli 3 kuyokwenziwa kuphela uma izimo ezingavamile zenzeke futhi kunikezwa nemvume yalokho kubheka enye indlela uMqondisi Wezokushushiswa Komphakathi. UMthethosivivinyo ubalula uhla lwezindlela okungabhekwa kuzo ezinye izindlela okungakhethwa kuzo, kusukela ekuxoliseni ezinhlangathini ezilimele kuya ekuyeni ohlelweni lokwelapha nokubhekwa isiphathimandla sezokuhlunyelelisa kwezimilo. Lapho umyalo wokubheka enye indlela yesijeziso kuhanjiswa nayo, ngeke ishushiwe ingane.

UMthethosivivinyo Wezobulungiswa Bengane uthi ukuboshwa kwengane eneminyaka engaphezu kwengu-14 kuyoba into yokugcina futhi ingane eneminyaka engaphansi kwengu-14 ngesikhathi sesigwebo angeke yagwetshwa isigwebo sasejele. Ingane eneminyaka engaphezu kuka-14 eyenze icala leSheduli 3 ingagwetshwa isigwebo sasejele.

## Isinxephezelo

Inkantolo, ngokwesahluko 300 *soMthetho Wenqubo yokujeziswa Kwezephulamthetho* uyala umuntu olahlwe yicala ukuthi anxephezele (akhokhele) ummangali ngezindleko eziye zaba khona ngenxa yobugebengu, kubandakanya:

- Izindleko zokwelapha;
- Izindleko zenye indawo yokuhlala uma ephoqekile ukushiya ikhaya;
- Izindleko zokwelulekwa kommangali;
- Izindleko zempahla entsha elinyaziwe; kanye
- Namaholo alahlekile ngenxa yokuya enkantolo.

Isicelo zezindleko ezinjalo kufanele senziwe ekupheleni kokuthethwa kwecala kanti kuyoba nomphumela wesahlulelo esiphathelene nokomphakathi. Ummangali kufanele abe nobufakazi bomonakalo odalekile. Uma umyalo onjalo usuvunyiwe, ummangali ngeke esaya enkantolo yamacala omphakathi emva komonakalo. Isigaba 300 sibhekelela umonakalo wempahla eyifa (ukulahlekelwa ngokwezimali), hhayi umonakalo odalekile wezinhlungu nokuphatheka kabi obekungatholakala ngokuya enkantolo yamacala aphathelene nomphakathi.

Lesi sigaba sizoqhakanjiswa ezinhlelweni zokuqwashisa umphakathi uMnyango Wezobulungiswa njengengxenywe yokuqalisa uSomqulu Wezisulu.

#### **Qaphela:**

Ngokwesigaba 8(a) soMthetho Wokukhuthaza Ukulingana Nokuvimbela Ukucwasa Ngokungafanele, akukho muntu ozocwasa omunye ngokobulili kubandakanya udlame oluphathelene nobulilini. Isigaba 28(1) soMthetho sithi uma kunobufakazi ngesikhathi kushushiswa banoma yiliphi icala, ukuthi kuye kwaba khona ukucwasa ngokobuhlanga, ubulili noma ukukhubazeka kube neqhaza ebugebengwini, lokhu kufanele kuthathwe njengesimo esandisayo ukwenzela isigwebo.

## Izigwebo ezincane ngokufanele

Izigwebo ezincane ngokufanele zethulwa *uMthetho Wenqubo Yokujeziswa kwezephulamthetho owunombolo 105 wango-1997*. UMthetho ubeka isigwebo esincane ngokufanele sokudlwengula:

|                  |                  |
|------------------|------------------|
| Icala lokuqala   | Iminyaka engu-10 |
| Icala lesibili   | Iminyaka engu-15 |
| Icala lesithathu | Iminyaka engu-20 |

Ngaphansi kwezimo ezithile, ukudlwengula kungaholela esigwebeni sempilo yonke (iminyaka engu-25). Lesi isibonelo lapho ummangali wadlwengulwa izikhathi ezingaphezu kwesisodwa; wadlwengulwa iqulu labantu, lapho ayeneminyaka engu-16 khona, ekhubazeke ngokomzimba noma egula ngenqondo. Siyosebenza futhi lapho umsolwa eke walahlwa amacala

okudlwengula ngaphambili noma azi ukuthi wayene-HIV ngesikhathi sokudlwengula.

Umthetho wesigwebo esincane ngokufanele siyasebenza futhi enganeni ebekwe icala ephakathi kweminyaka engu-16 nengu-18 ubudala.

Izinkantolo zivumelekile ukwehluka esigwebeni esincane ngokufanele esibekiwe uma kukhona **izimo ezinohlonze neziphokayo** ukuthi umuntu anikezwe isigwebo esincane. Izinkantolo ziye zahumusha lesi sihlinzeko ngokwehlukana.

*UMthetho Ochibiyelwe Wenqubo Yokujeziswa Kwezaphulamthetho (Ukugweba) (owunombolo 38 wango-2007)* kade ulokhu usebenza kusukela mhla zingu-31 Disemba 2008. Ubalula izinto ezithile izinkantolo engazithathi njengezimo ezinohlonze neziphokayo ukuzivumela ukuthi zehluka esigwebeni esincane ngokufanele. Lezi zinto zibandakanya:

- Umlando wezocansi wangaphambili wommangali;
- Ukungabi khona kokulimala emzimbeni okubonakalayo kummangali;
- Izinkolelo zesiko nezenkolo zomsolwa ngokudlwengula; kanye
- Nokuthi bekukhona ubudlelwano phakathi komsolwa nommangali ngaphambi kokudlwengulwa.

# IBhuku Likazwelonke Lamagama Ezigebengu Zocansi

UMthetho awuvumeli ukusetshenziswa kwabantu abatholakale benecala (abalahlwe yicala) lokwenza ubugebengu bezocansi enganeni noma umuntu okhubazeke ngokwenqondo ezimweni ezithile. Abantu abanjalo abavumelekile, isibonelo, ukusebenza nengane noma nomuntu okhubazeke ngokwenqondo, noma abe umzali wengane angayizali.

UMthetho wakha iBhuku Likazwelonke Lamagama Ezigebengu Zocansi, lapho abaqashi bezobheka khona abasebenzi babo. Izephulamthetho ezinjalo zizofakwa eBhukwini Likazwelonke futhi abantu banelungelo lokufaka isicelo sesitifiketi esikhombisa ukuthi igama lomuntu lisebhukwini noma cha.

IBhuku lizogcinwa liyimfihlo. Kuzokwenzeka ukuthi umuntu afake isicelo sokuthi igama lakhe lisuke ebhukwini emva kweminyaka engu-5 noma engu-10 ngaphandle uma umuntu wayegwetshwe izinyanga ezingaphezu kwezingu-18, lapho umuntu lingeke lisuswe igama lakhe ebhukwini.

Mayelana nezingane leli bhuku lifana ncamashi neNgxenye A neNgxenye B yeBhuku Lokuvikelwa Kwengane ehlinzekelwe *eMthethweni Wezingane*.

# Izinsiza zomhlukunyezwa

Isahluko 5 soMthetho saqala ukusebenza kusukela mhla zingu-21 Mashi 2008 kwase kushicilelwa imitheshwana ngoMeyi 2008.

Emva kokudlwengulwa, umhlukunyezwa kufanele athole ngokushesha indawo yezempilo ehlinzeka izinsiza zokuhlaselwa ngokocansi ukuze:

- Kubhekwe ukulimala;
- Athole imithi ukuvikela i-HIV, izifo ezithelelana ngocanso nokukhulelwa;
- Athole ezinye izinsiza zezempilo ezidingekayo kubandakanya ukwelulekwa; kanye
- Nokuthi agcwalise ifomu ebizwa nge-J88 kanye nokuthola ubufakazi obuphathelele nokwelashwa isifo nezomthetho.

Umuthi onikezwa emva kokudlwengulwa okuthiwa i-prophylaxis (PEP) ye-HIV umuthi odambisa igciwane ama-ARVs anikezwa umuntu odlwenguliwe ukunciphisa ingozi yokungenwa i-HIV ekudlwengulweni. I-PEP ayimsizi umuntu ovele esene-HIV. I-PEP isebenza kakhulu uma isheshe yanikezwa. I-PEP kufanele iphuzwe izinsuku ezingu-28 kanti ingaba nemiphumela emibi ethile.

UMthetho uqondise ekuhlinzekeni umuthi onikezwa umuntu emva kokudlwengulwa i-prophylaxis (PEP). I-PEP itholakala mahhala kubantu abadlwenguliwe ababika emahoreni angu-72 emva kokudlwengulwa. Ivikithimu yezocansi akusho ukuthi akufanele avule icala ngaphambi kokunikwa i-PEP. Uma umhlukunyezwa eya ephoyiseni kuqala, iphoyisa kufanele limazise ngokubaluleka kokuthola i-PEP bese limyalela ukuthi aye kulezo zindawo lapho kutholakala khona i-PEP. Iziteshi zamaphoyisa kufanele zibe nohla lwezindawo ze-PEP esiteshini samaphoyisa (itholakala ku-[http://www.saps.gov.za/docs\\_pubs/legislation/sexual\\_offences.htm](http://www.saps.gov.za/docs_pubs/legislation/sexual_offences.htm)) futhi kufanele linike isisulu isaziso esichaza ngelungelo laso lokuthola i-PEP (IFomu 1 yeMitheshwana).

*Uma umhlukunyezwa eya endaweni yezempilo, kufanele athole uhla lwezinsiza ngokwenqubomgomo ephathelene nokuhlasela ngokocansi nemihlahlandlela kazwelonke yokusingatha ukunakekela okumayelana nokuhlaselwa ngokocansi yoMnyango Wezempilo. (Qaphela: Lama phepha asebenzisa amagama 'ukuhlasela ngokocansi' uma eqondise ekungeneni kumuntu ngokocansi (ukudlwengula) – lokhu kwehlukile ebugebengwini 'bokuhlasela ngokocansi' UMthetho Ochibiyelwe Wenqubo Yokujeziswa Kwezephulamthetho (Amacala Ezocansi)*

“Ukuhlola i-HIV  
okuyimpoqo umsolwa”

UMthetho uvumela umhlukunyezwa, umuntu onesifiso noma umseshi ukuthi bafake isicelo enkantolo sokuthi kuhlolwe umsolwa i-HIV ecaleni lezocansi. Isicelo esinjalo kufanele sifakwe ezinsukwini ezingu-90 emva kokudlwengula. Lesi sihlinzeko singasebenza ebugebengwini bezocansi lapho umhlukunyezwa aye athola ukuhlangana nokusaketshezi komzimba komsolwa.

Isicelo kufanele sinikezwe umseshi okufanele aqinisekise ukuthi lokhu kucatshangisiwa kahle imantshi. Uma umyalo usuvunyiwe, umseshi useyothatha umsolwa ukuthi ayohlolwa i-HIV bese enikeza isisulu imvilophi evaliwe enemiphumela ye-HIV. Imiphumela yokuhlolwa iyimfihlo kanti ngeke yadalulwa komunye umuntu.

UKhomishani Kazwelonke Wamaphoyisa kufanele aqinisekise ukuthi abaseshi bathatha imiphumela njegeyimfihlo futhi kufanele bavimbele ukutholakala okungagunyaziwe kwamarekhodi.

Uma umhlukunyezwa ethatha isinqumo sokufaka isicelo sokuthi umsolwa ayohlolwe i-HIV, umhlukunyezwa kusuke kusafuneka ukuthi aboniswe ngokuthi athole i-PEP nokuthi aqhubeke nokuyidla, noma ngabe imiphumela ithi akanayo i-HIV. Kufanele futhi aboniswe ukuthi aye ocansini oluphephile.

## Ngabe isho ukuthini imiphumela yokuhlolwa?

Ukuhlolwa i-HIV ukuthola ubukhona bamaphrotheyini egazi akhiqizelwa ukulwa ne-HIV egazini lomuntu. Kungaba ukuthi kumsolwa kutholakale ukuthi akanayo i-HIV ngesikhathi ehlolelwa, nakuba enayo, ngenxa yokuthi umzimba wakhe awukakhizi lama phrotheyini asegazini alwa ne-HIV. Uma umsolwa ehlolelwe kwatholakala ukuthi akanayo i-HIV, kungenzeka ukuthi wayesenayo i-HIV ngesikhathi sesehlakalo kodwa kuwukuthi wayesesikhathini lapho i-HIV ingatholakali khona egazini.

Uma umsolwa ehlolelwa kutholakala ukuthi une-HIV, akusho ukuthi umhlukunyezwa uye watholeleka nge-HIV noma usengozini enkulu yokungenwa i-HIV. Kubalulekile ukuthi athole ukwelulekwa nokuboniswa ngokuphatelene nokwelapha emva kokuthola imiphumela yokuhlolwa i-HIV kwesephulamthetho.

Ukuphela kwendlela ongazi ngayo isimo sakho se-HIV ukuthi uhlale uhlolelwa.

# Imithombo yolwazi ewusizo

## Umthetho ohambisanayo:

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## Imitheshwana, imiyalelo kanye nemiyalo kazwelonke:

*Imitheshwana Ebhekene Nokujeziswa Kwezephulamthetho (Amacala Ezocansi nezinto ezihambisana nawo)*

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# Lapho kutholakala khona usizo

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