

# Ukuhlukunyezwa Ngokocansi Okwenzeka Emajele: Inkinga Yokudicilelwa Phansi Kwamalungelo Abantu Emhlabeni Wonke

Ukuhlukumeza ngokocansi okwenzeka emajele<sup>1</sup> kuyinkinga enkulu emhlabeni wonke. Ezikhathini eziningi, abahlukumeza abanye yilabo abasebenza emajele, okuyibona bantu okufanele bavikele iziboshwa. Kungakhathaliseki ukuthi ukudlwengula kwenziwa abantu abasebenza emajele noma kwenziwa ezinye iziboshwa, ukudlwengula noma ezinye izindlela zokuhlukumeza ngokocansi emajele kuthathwa emhlabeni wonke njengendlela yokuhlukumeza okubi kakhulu. Kuwumthwalo kahulumeni ngokuphelele ukuvikela ukuphepha kweziboshwa. Ukuhlukumeza ngokocansi okwenzeka emajele, kungakhathaliseki ukuthi kwenziwa ubani, kubonisa ukwehluleka kukahulumeni ukufeza lesi sibophezelo.

Emazweni amaningi, azikho izingcwaningo ezisemthethweni ezikhuluma ngokwanda kokuhlukunyezwa ngokocansi emajele futhi ziyabalwa iziboshwa ezibika ukuthi zihlukunyeziwe. Kodwa ongoti abaningi bezamajele bayavumelana ukuthi ukungabi khona kwalezi ngcwaningo akusho ukuthi amajele aphephile. Kunalokho, iziboshwa esezidedelwe emajele, abasebenza emajele kanye nalabo abagqugquzela amalungelo abantu emhlabeni wonke bayavumelana ngokuthi labo abahlukunyezwe ngokocansi emajele bayenqaba ukukhuluma ngokubehlele — ngesinye isikhathi ngenxa yokuba namahloni, noma ngoba besaba ukujeziswa noma ngoba becabanga ukuthi alukho usizo abangase baluthole.

## Isimo Sokuhlukunyezwa Ngokocansi Emajele

Ukuhlukunyezwa ngokocansi emajele kungaba ngezindlela ezahlukene futhi izincazelo ziyahluka emazweni ahlukahlukene, ezindaweni ezihlukahlukene. I-Just Detention International (JDI) ichaza ukuhlukunyezwa ngokocansi emajele njengokuhlangana ngokocansi nomunye umuntu engafuni noma ngokwesatshiswa esinye isiboshwa, nanoma yikuphi ukuthinta ngendlela yezocansi ngenkani yisisebenzi sasejele, noma kukhona ukungenana noma kungekho futhi kungakhathaliseki ukuthi ohlukumezayo noma ohlukunyezwayo uyibuphi ubulili. Ukuhlukumeza ngokocansi kwenzeka emajele abesifazane nawabesilisa futhi abahlukumezi bangaba bulili bunye nabahlukunyezwayo noma bangaba abobunye ubulili.

Amajele emhlabeni wonke agcwele udlame nokudlwengula. Ukuze zizincengele futhi zisindise izimpilo zazo, ezinye iziboshwa ziba nobudlelwano neziboshwa ezicatshangwa ukuthi zinamandla, zinikele ngocansi ukuze zivikeleke. Ezindaweni eziningi ukudlwengula okwenzeka emajele kuhlobene namaqembu ezigelekeqe emajele: kaningi abadlwengulwayo “bayathengiswa” kula maqembu noma baphoqwe ukuthengisa ngemizimba yabo. Abaningi balabo abadlwenguliwe, badlwengulwa izikhathi eziningi. Izindaba zihamba masinya ejele, futhi uma isiboshwa sesidlwenguliwe siba yisisulu sezinye iziboshwa nalabo abasebenza ejele.

Esikhathini esiningi, yilabo abasebenza emajele, hhayi ezinye iziboshwa, abenza isenzo sokudlwengula. Kwezinye izikhathi, abasebenzela ijele bagqugquzela ukudlwengulwa kwezinye iziboshwa. Kokunye, bafuna ucansi ngenkani ukuze bazikeze ukudla izidakamizwa noma isithembiso sokuphathwa kangcono. Abanye abasebenza emajele baba nobudlelwano obuhlanganisa ucansi neziboshwa njengokungathi kuvunyelwene. Ngisho noma ukuya ocansini kungaphoqelelwanga,

akulungile ukuthi abasebenza emajele babe nobudlelwano obuhlanganisa ucansi neziboshwa. Abasebenza emajele banamandla negunya phezu kweziboshwa futhi banganciphisa inkululeko yazo noma benze impilo yazo ibe nzima kakhulu. Ngaphansi kwalezi zimo, akulula ukuthi iziboshwa zenqabe lokhu okufunwa ngenkani yilaba abasebenza ejele abafuna ukuya ocansini nazo.

Ukudlwengula okwenzeka emajele kungabuye kube yindlela yokucindezela ngokwezepolitiki. Kulokhu, ohulumeni abashaya umthetho emajele noma labo abasebenza emajele bakhapha umthetho noma banikeza imvume yokuthi iziboshwa okucatshangwa ukuthi ziqophisana nabo kwezepolitiki zidlwengulwe njengendlela yokuzijezisa noma yokuzesabisa.

Yize noma ubani engadlwengulwa ejele, labo okucatshangwa ukuthi abanamandla basemathubeni amaningi okudlwengulwa. Laba bahlanganisa: abesifazane abathanda abanye abantu besifazane (lesbians), abesilisa abathanda abanye abesilisa (gays), ababulibubili (bisexual), abantu abazizwa bengabobulili obuhlukile kulobo abanikwa bona lapho bezalwa (transgender), intsha noma abantu abanomzimba omncane; abaqala ukuboshwa kanye neziboshwa ezingenalo udlame.<sup>ii</sup> Emajele abesilisa, imibono mayelana nobudoda nokuba yisidlakela ivamile, okusho ukuthi iziboshwa ezihlukumeza ezinye zithathwa ngokuthi zinamandla - noma zingamadoda oqobo — labo abahlukunyezwayo bathathwa ngokuthi abanamandla noma bathambe njengabantu besifazane. Le mibono yenza kube nzima ngalabo abahlukunyeziwe ukuba bavele obala babike lokhu futhi bafune usizo abaludingayo. Nalezo ziboshwa ezingahlukunyezwayo ngokocansi ziphoqeleka ukuthi ziphile kulesi simo esenza ukuthi lowo okucatshangwa ukuthi akanamandla usemathubeni okudlwengulwa.

Kungakhathaliseki isimo, ukudlwengula kuyisenzo sodlame esisetshenziswa ukubonisa ingcindezero, amandla kanye nokuba yibhoklolo. Ukudlwengulwa akulona neze iphutha lalowo odlwenguliwe.

### Imiphumela Kulabo Abahlukunyeziwe

Ukudlwengulwa kanye nezinye izindlela zokuhlukunyezwa ngokocansi, kungakhathaliseki ukuthi kwenzeka ekhaya, emphakathini noma emajele kunemiphumela ebucayi ehlukumeza umoya nomzimba. Yize okwehlele labo abahlukunyeziwe kungafani, kuningi okufanayo ababhekana nako njengokwesaba, amahloni, ukuthukuthela, ukuhlaselwa ukwesaba, imicabango ethusayo ngaleso sigameko. Eziboshweni, lokhu kuba kubi nakakhulu ngoba asikho isikhathi sokuba wedwa, ukungabi nawo amandla okulawula indawo ezikuyo nokuqhubeka zibona umuntu ozihlukumezile ejele.

Ngaphezu kokuhlukumezeka komoya okubangwa ukudlwengulwa, labo abadlwenguliwe baba semathubeni okuthola isandulela ngculazi kanye nezinye izifo zocansi ezibulalayo. Abaningi abahlukunyezwe ngokocansi bayalimala ngokomzimba, abanye baphuka amathambo; esikhathini esiningi loku kulimala akwelashwa. Iziboshwa zesifazane ezidlwenguliwe ziba sengcupheni yokukhulelwa, futhi zingase ziphoqeleke ukuthi zikhiphe isisu. Yize usizo oluphuthumayo lokwelapha nokwelulekwa — kuhlanganise nokwelashwa kwangemva kokudlwengulwa ukuze kuvinjwe izifo zocansi ezithelelanayo — lungasiza kakhulu, zibalwa iziboshwa eziba sesimweni sokuthola lolo sizo.

Emhlabeni wonke, iziboshwa eziningi zigcina zidedeliwe emajele, bese zibuya nalokho okuzehlele ejele — kanye nokuhlukumezeka okukhulu — emindenini nasemiphakathini yazo. Uma zingalutholi usizo, iziboshwa ezidlwengulwe ejele zisengcupheni ephakeme nezinkinga ezingapheli, njengokucindezeleka (depression), imizwa yokuzibulala kanye nokuba yimilutha yotshwala noma izidakamizwa.

Ngenxa yamahloni nehlazo elihambisana nokudlwengulwa ejele, iziboshwa zingase zingatsheli muntu ngisho nalabo ezishade nabo kanye nalabo eziya nabo ocansini ngalokho okuzehlele - ngaleyo ndlela kwenyuka amathuba okudlulisa isandulela ngculazi nezinye izifo ezithathelwana ngocansi. Iziboshwa eziningi ezihlukunyezwe ngokocansi ziba nokuziphatha okungazikhubaza zona ngokwazo, imindenini yazo kanye nemiphakathi ezihlala kuyo. Iziboshwa esezidedelwe ejele ezidlwenguliwe futhi ezingazange zibhekane nalokhu ngendlela enosizo zisengcupheni enkulu yokubuyela emikhubeni ezibeka esimweni esibucayi sobugebengu, ziba sengcupheni yokuba mpofu futhi ziba semathubeni amaningi okubuyela ejele.

Yize kunale miphumela engemihle, ukwelulama emzimbeni nasengqondweni kungenzeka. Ngosizo ezilutholayo, iziboshwa ezidlwenguliwe zingafunda ukubhekana nalobu buhlungu ngendlela ephumelelayo, zikhulume ngemizwa yazo ngendlela engazihlukumezi zona ngokwazo noma ehlukumeza abanye futhi zikwazi ukwakha izimpilo zazo kabusha.

Kuyazisiza iziboshwa eziningi ukwazi ukuthi azizodwa, nokuthi bakhona nabanye abantu abadlule kulokhu futhi balulama. Ngezinye izikhathi abadlwengulwe ejele bafunda ukuzikhulumela futhi baba abalweli bamalungelo abantu futhi banokuthile okusha abakuphilelayo ngokusebenzela ukuqinisekisa ukuthi abanye abantu abahlukumezeki njengabo.

### Ukugwema Ukudlwengulwa Emajele

Ukudlwengulwa kwabantu emajele kungavinjelwa. Lokhu kuhlukunyezwa kuwumphumela wemithetho emibi, imikhuba eyingozi, kanye nokuthi akekho kubasebenzi basemajele ofuna ukulandisa. Amajele amaningi ayakwazi ukugwema ukudlwengula ngokuthatha izinyathelo eziyisisekelo sokuvikela iziboshwa. Ngokwesibonelo, ukuhlukanisa iziboshwa ezingase zibe sengozini yokudlwengulwa kulezo ezingahle zihlukumeze kungehlisa izinga lokudlwengula emajele. Imigomo yokuqeqeshwa esezingeni eliphakeme ingasiza abasebenzi basemajele ukuba bafunde izindlela zokugcina iziboshwa ziphephile nokuphenya imibiko emayelana nokuhlukunyezwa. Kubaluleke kakhulu ukuthi abaholi bamajele benze kucace ukuthi ukuhlukumeza ngokocansi, kungakhathaliseki ukuthi kwenziwa abasebenzi basemajele noma iziboshwa, ngeke kubekezelelwe nakancane. Ngaphezu kwalokho, labo abahlukunyeziwe kufanele babe nezindlela eziphephile zokubika ukuthi bahlukunyeziwe ngaphandle kokuthi babe semathubeni okushaywa noma okuphinde bahlukunyezwe.

Ukudlwengulwa kuvame ukwenzeka emajele angavumeli noma angahambisani nokubuyezwa kwemithetho nezindlela zokugada izisebenzi. Emajele amaningi, izisebenzi ezisezikhundleni eziphakeme azigadwa noma zigadwa kancane, futhi azicelwa ukuthi zilandise kunoma ubani. Ukuze kuvikelwe ukuphepha kweziboshwa, amajele kufanele athathe izinyathelo eziqinile zokuhlola futhi avume ukuthi amaqembu angaphandle ahlole ngaphakathi. Ulwazingqangi olutholwa amaqembu angaphakathi nawangaphandle maqondana nokudlwengula emajele kumele lusakazwe, lukhishelwe ngaphandle emphakathini.

Ngonyaka ka-2012, uMmnyango Wezobulungiswa (U.S. Department of Justice) wase-U.S. wanyathelisa umbiko othi balinganiselwa enanini elingaphezu kuka-209,400 ngonyaka ka-2008 abantu abahlukunyezwa ngokocansi emajele ase-U.S.<sup>iii</sup> Leli nani, elisekelwe ocwaningweni olubanzi nolunzulu, luye lwasiza ekuyivezeni kabanzi le nkinga e-U.S.

Izindlela eziqinile zokuhlola zingabekwa nangokuthi kusetshenziswe izivumelwano ezibophayo ezihlanganisa amazwe amaningi. I-Optional Protocol to the Convention Against Torture (OPCAT), eyisenzelo se-United Nations Convention Against Torture, iphoqa amazwe ukuba asayine lezi zivumelwano zokuqala amaqembu azimele ezweni azovakashela amajele ngenhloso yokunqanda izenzo zokuhlukumeza. Kuze kube manje, angu-71 amazwe asayine i-OPCAT. Ukusayinwa kwe-OPCAT ngamazwe jikelele kungasiza ekuthuthukiseni ukulandisa nokuthi konke kube sobala emajele, ngaleyo ndlela kwehle izinga lezenzo zokudlwengula.

Kusetshenziswa izinqubo nemigomo ephucukile, kumelwe kube khona noshintsho emibonweni yabantu mayelana nokudlwengula emajele ukuze kuphele ukuhlukumeza. Esikhathini esiningi, ihlazo lokudlwengulwa noma inkolelo yokuthi iziboshwa ezidlwenguliwe zifanelwe ukudlwengulwa kwenza labo abahlukunyeziwe bangakhulumi ngalokho kuhlukunyezwa nokuthi bathole usizo abaludingayo. Abahlukunyeziwe kufanele bakwazi ukukhuluma ngokukhululekile ngalokho okubehlele ukuze le nkinga iqondisiswe. Imibono yomphakathi evikela ukuphepha kanye nesithunzi sawo wonke umuntu, kanye neziboshwa, yenza kube lula ngalabo abahlukunyeziwe ukuba bakhulume ngokuhlukunyezwa kwabo futhi, ekugcineni, lokhu kuzosiza ekuqedeni ukudlwengula okwenzeka emajele.

Ngenxa yemizamo yokuzimisela ye-JDI namanye amaqembu alwela amalungelo abantu, e-U.S. imibono yomphakathi mayelana nokudlwengulwa iyashintsha, isuka emibonweni engaluthatheli phezu lolu daba kuya emibonweni yokuthi loku kuhlukumeza kuwukuhlasela amalungelo omuntu.

### Mayelana Ne-Just Detention International

I-Just Detention International yinhlango yezempilo nokuvikelwa kwamalungelo abantu efuna ukuqeda ukudlwengulwa kwabantu nokunye ukuhlukunyezwa ngokocansi emajele. I-JDI inezinjongo ezintathu ezibalulekile emsebenzini ewenzayo: ukwenza uhulumeni alandise ngokudlwengula okwenzeka emajele; ukugququzela imibono yomphakathi ebeka ezingeni

eliphezulu impilo enhle kanye nokuphepha kweziboshwa nokuqinisekisa ukuthi iziboshwa ezidlwengulwe emajele zithola usizo eziludingayo.

I-JDI yasungulwa ngo-1980 ngu-Russell Dan Smith waseMelika ongomunye owadlwengulwa ejele. Njengo-Smith, abaholi bokuqala abaningi abanjengo-Stephen Donaldson no-Tom Cahill nabo badlwengulwa ejele.

U-Donaldson wadlwengulwa kaningi ezinye iziboshwa ngemva kokuboshwa ngesikhathi sokutoyitoyela ukungahambisani nempi. Umbhali oqavile, u-Donaldson wenza yanakwa kakhulu ezweni lonke inkinga yokudlwengula okwenzeka emajele futhi wabhala umbhalo i-amicus owaqopha umlando ecaleni elaqulwa enkantolo ngo-1994 eNkantolo Ephakeme yase-US, u-Farmer ephikisana no-Brennan. U-Donaldson washona ngonyaka ka-1996 ebulawa yingculazi ayithola ngemva kokudlwengulwa ejele.

U-Tom Cahill, umakadebona olwela amalungelo abantu nophikisana nempi naye wadlwengulwa yiqembu leziboshwa. U-Cahill waba umongameli we-JDI ngo-1998, futhi imizamo yakhe yokuqeda ukudlwengula okwenzeka emajele yaba nomphumela wokuba kwenziwe i-Prison Rape Elimination Act (PREA) yangonyaka ka-2003, umthetho wokuqala wabantu odingida loku kuhlukumeza.

I-JDI yiyo kuphela inhlangano emhlabeni wonke ezinikezele ukuqeda lolu hlobo lokuhlukumeza. Abasunguli bale nhlangano bakhuluma obala ngokulwisana nokudlwengulwa emajele ase-U.S. ngesikhathi babembalwa abanesibindi sokwenza kanjalo. Ukuzinikela kwabo kuholele ekutheni abantu baqwashiswe kakhulu — e-US nasemhlabeni wonkana — ngokudlwengula okwenzeka emajele futhi kugququzele abantu abaningi ukuthi bathathe izinyathelo zokuphikisana nako. Namhlanje, abantu abadlwenguliwe bayaqhubeka benendima ebalulekile emsebenzini we-JDI.

Umgomo-sisekelo obalulekile womsebenzi we-JDI wukuthi uma uhulumeni encisha umuntu inkululeko yakhe, usuke ezinika umsebenzi wokugcina lowo muntu ephephile. Ukudlwengula okwenzeka emajele kungavinjelwa. Amajele anabholi abazimisele, imigomo-sisekelo emihle kanye nezinqubo ezilungile ayakwazi ukugcina iziboshwa zivikelekile. I-JDI isungula imithetho nemigomo-sisekelo, isebenzisane namajele ukuqeqesha abasebenzi babo nokufundisa iziboshwa, iphinde futhi inikeze izinkulungwane zezisulu zokudlwengulwa ulwazi emajele unyaka nonyaka.

I-JDI ifuna ukwakha ubudlelwano nalabo abalwela amalungelo abantu, abasebenza emajele, abenzi bemigomo-sisekelo, abanikeza ngosizo lwezempilo, abaluleki, kanye nalabo abadlwengulwa emajele emhlabeni wonke, ukusiza ukwakha imikhandlu yomphakathi nekazwelonke ngenhloso yokuqeda nya ukudlwengula okwenzeka emajele. Kungakhathaliseki ukuthi umuntu wenze bugebengu buni, ukudlwengula akuyona ingxenye yesijeziso.

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I-JDI ise-U.S. futhi inehhovisi eNingizimu Africa. I-JDI isike yabeka izinkulungwane eBotswana, eGuyana, e-India, eJamaica, eMexico, ePhilippines nase-United Kingdom. Izinhlelo ze-JDI ziqhutshwa kakhulu ngesiNgisi. Njengamanje, i-JDI iyakwazi ukuphendula izincwadi futhi inikeze ulwazi ngesiNgisi neSpanishi, ngaphandle kwalo mbiko ofinyeziwe. I-JDI isiza abantu abayizisulu zokudlwengulwa ngokubayisa ezindaweni ezisiza ngokweluleka uma udlwenguliwe, izinsiza zezomthetho nezinye izinsiza zezisulu zokudlwengulwa emajele ase-U.S. nawaseNingizimu Afrika kuphela. Ukuze uthole ulwazi oluthe xaxa ngomsebenzi owenziwa i-JDI, sicela uvakashele i- [www.justdetention.org](http://www.justdetention.org).

### Izikhombo

<sup>i</sup> Izingubo emajele zihlukile kuye ngamazwe nangezindawo, njengoba nje zihlukile nezikhungo zokubopha abantu. Ngezinhloso zale dokhumenti, “ijele” lisho zonke izinhlobo zezikhungo ezivalela abantu, kuhlangukise namajele abantu abadala, amajele ezingane, izindawo ezisemphakathini ezivalela abantu kanye nezindawo zamaphoyisa zokuvalela abantu.

<sup>ii</sup> Maqondana negama lesiNgisi elithi “gays”, “lesbians”, nelithi, “transgender”, asinawo amagama ahloniphisayo ngolimi lwesiZulu, ngakho siwachazile.

<sup>iii</sup> National Standards to Prevent, Detect, and Respond to Prison Rape, Department of Justice, May 17, 2012, lencwadi itholakala ku [http://www.ojp.usdoj.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://www.ojp.usdoj.gov/programs/pdfs/prea_final_rule.pdf)

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