

ISITATIMENDE SABEZINDABA - UMTHETHO WOKWENGANYELWA KWENTELA

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1. Ngiyazi ukuthi isicelo esenziwe abakwa-SARS enkantolo mayelana namasamanisi akhishwe umVikeli woMphakathi angiphoqelela ukuba ngidalule ulwazi lomkhokhintela selubangele isinsolo eziningi kwabezindaba nasezinkundleni zokuxhumana. Izinkulumo-mpikiswano ezinokuthula ziyisisekelo sentando yeningi enhle kanti nezinga laleyo nkulumo-mpikiswano liyenyuka uma inamaqiniso.

2. Isicelo esifakwe abakwa-SARS enkantolo asikho mayelana nomkhokhintela othile kodwa abakwa-SARS baye enkantolo ukuze bayocacisa futhi bathole ukubaluleka komgomo wezomthetho ogcizelela umgomo wentando yeningi ebudlelwaneni bokwethembana phakathi kwabakwa-SARS nabo bonke abakhokhintela. Leli yilungelo lomkhokhintela lokuba nobumfihlo, elimayelana nelungelo lobumfihlo balo lonke ulwazi - olomuntu nolwezimali – olusesandleni sabasingathi bentela. Ngakho-ke, umkhokhintela ngamunye eNingizimu Afrika unayo intshisekelo ngalolu daba esifuna ukucaciseleka kulo, kanti futhi akekho ongalunaka lolu daba.

3. Ungabuza ngempela ukuthi kungani inhlango, noma umuntu, angeke akuthakaselele ukuthola ukucaciseleka odabeni okubonakalayo ukuthi umphakathi unentshisekelo ngalo futhi lunomthelela omkhulu.

4. Umgomo womthethosisekelo wokutholakala kolwazi emphakathini olusezandleni zombuso kumele uhambisane nomunye umgomo womthethosisekelo, ofana nowobumfihlo, nokunye, okufana nobungozi obungaphezulu obulimaza lokhu okuthakazelwa uhulumeni noma abazimele. Intshisekelo yelungelo lomkhokhintela lobumfihlo, elimayelana nelungelo lobumfihlo bolwazi lomuntu olusesandleni sowengamele intela, lithathwa njengelungelo elingaphezulu kwelungelo lolwazi ngalokho livuna imithetho yobumfihlo evikela ubumfihlo. Ngakho-ke, isigaba sama-35 soMthetho oKhuthaza ukuTholakala koLwazi, 2000, uhlinzekela ukuvikeleka kwamalekhodi athile akwa-SARS ezicelweni ezifakwa umuntu wesithathu.

5. Ukudalulwa kolwazi lwentela kunemithelela emmongweni wokusebenza kwanoma yikuphi ukwenganyelwa kwentela - ukusetshenziswa nokuphoqelelwa kwemithetho nokulawulwa kwentela. Ukuqoqwa kwentela kucacile ukuthi kubalulekile ezimalini zanoma imuphi umbuso othola izimali ngezintela kanti isibopho sokuqala sabengamele intela ukuqoqa imali efanele okumele ize kuhulumeni ngezindleko eziphansi kakhulu kuhulumeni. Ukuzimisela kwabakhokhintela ukuthobela umthetho kuncike ekwethenjweni yizakhamizi namabhizinisi ukusingathwa kwentela okukhulunywa ngakho nokwethemba ukuthi ulwazi lwabo angeke ludalulwe inoma kanjani. Lokhu abakhokhintela abakulindele kumele kuqinisekiswa ukuba iziphathimandla zentela ezengamele imithetho yentela zikwenza lokhu kube yinhlalayenza futhi kube nobulungiswa ukuze abakhokhintela abazithola besesimweni esifanayo baphathwe ngokulingana futhi kube yinhlalayenza ngaphansi komthetho. Ekulinganiseni lokhu umphakathi onentshisekelo yakho, kwesinye isikhathi okuncintisanayo, ngokusobala imithetho ihlose ukuthi ubumfihlo bomkhokhintela ikhona okuhamba phambili, ngaphandle uma kuchaziwe emthethweni.

6. UKhomishana wakwa-SARS nabo bonke abasebenza ngentela baphoqolelwa ngokomthetho ukuthi ulwazi lwabakhokhintela baluphathe ngobumfihlo, ngaphandle uma kungaphansi kwezimo ezithile ngokomthetho. Izimo ezithile ngokomthetho azisebenzi kumVikeli woMphakathi.

7. Ukuhlinzekela kobumfihlo

7.1 NgokoMthetho wokuSingathwa kweNtela, 2011, (TAA) "ulwazi lomkhokhintela" luncike kokuhlinzekelwa ubumfihlo okuqukethwe kuSahluko 6 (izigaba zama-67 kanye nemzama-74) ze-TAA.

7.2 Umthethomvama ukuthi zonke izisebenzi zakwa-SARS kumele zikwazi ukuba nobumfihlo "bolwazi lomkhokhintela". Isigaba sama-69(1) se-TAA sihlinzekela:

Umuntu esikhathini samanje oyisebenzi noma owayeyisebenzi sakwa-SARS kumele agcine ulwazi lomkhokhintela luyimfihlo kanti ngeke adalule ulwazi lomkhokhintela kumuntu ongesona isisebenzi sakwa-SARS.

7.3 Kodwa-ke, kukhona ukuhlinzekela okuvumela ukuthi "ulwazi lomkhokhintela" ludalulwe kumuntu ongesona isisebenzi sakwa-SARS. Lezi zimo zingahlukaniswa zibe yizinhlobo ezinhlanu:

- Isisebenzi sakwa-SARS singaludalula ulwazi lomkhokhintela ukuze kwenziwe okushiwo uMthetho weNtela.
- Ngokomyalelo wenkantolo.
- Uma umkhokhintela enika imvume ebhalwe phansi.
- Uma omunye uMthetho uveza okungaphezulu kokuhlinzekelwa yi-TAA - ngokwesigaba sama-69(2)(b) se-TAA.
- Kubantu abathile nezinhlangano ezithile ezihlonzwe ku-TAA - ngokwesigaba sama-70 se-TAA

7.4 Le Mithetho elandelayo iqukethe ukuhlinzekela engaphezu kokuhlinzekelwa ubumfihlo bentela:

- Isigaba se-9 soMthetho weziDakamizwa nokuSushumbiswa kweziDakamizwa (i-Drugs and Drug Trafficking Act), 1992
- Isigaba sama-37 soMthetho wesiKhungo sobuNhloli kwezeziMali (i-Financial Intelligence Centre Act), 2001; kanye
- neSigaba sama-71 soMthetho wokuVimbela uBugebengu obuHleliwe (i-Prevention of Organised Crime Act), 1998.

UMthetho womVikeli woMphakathi (i-Public Protector Act), 1994, awunakho ukuhlinzekela okungaphezu kokuhlinzekelwa yi-TAA ngobumfihlo.

7.5 Isigaba sama-70 sinohlu lwezinhlangano ezithile abakwa-SARS abangazinika ulwazi kodwa isigatshana sama-70(5) sihlinzekela ukuthi lokhu kudalula kwenziwe kuphela uma kunesidingo, kufanele futhi kuhambisana nokusebenza noma nomsebenzi womthetho. Okunye ukudalulwa kolwazi lomkhokhintela selukhishwa yizinhlangano abakwa-SARS abaludalule kuzo ulwazi njengokuhlinzekelwa kwakhona nakho kulawulwa ngesandla esiqinile.

UmVikeli woMphakathi akayena umuntu osohlwini lwesigaba sama-70 se-TAA.

7.6 Ngisho noma ngabe izinhlangano zivunyelwe ngokomthetho, abakwa-SARS kumele basebenzise umqondo mayelana nolwazi olucelwayo, ukuthi luzosetshenziswa kanjani nokuthi luzovikelwa kanjani.

7.7 Umongo wale-TAA efinqwiwe ukuthi i-TAA ayibavumeli abakwa-SARS ukuba bahlinzeke "ulwazi lomkhokhintela" kumVikeli woMphakathi.

7.8 Ukwepfulwa kokuhlinzekela ubumfihlo kwe-TAA kuyicala ngokwesigaba sama-236 se-TAA.

7.9 Ngokulinganayo, uma umuntu, ngaphandle kwesizathu, enqaba noma ehluleka ukuthobela isicelo solwazi esifakwe umVikeli woMphakathi unecala ngaphansi kwesigaba se-11(3) soMthetho womVikeli woMphakathi, 1994.

8. Ngemizamo yokugwema amacala, ngonyaka wezi-2018/19 izisebenzi zakwa-SARS nehhovisi lomVikeli woMphakathi bavela phambi komkhandlu ngokuhlanganyela. Iseluleko esanikwa abakwa-SARS nehhovisi lokuVikelwa koMphakathi, enqondweni yami, siqinisekisa ngokusobala ukuthi abakwa-SARS angeke baphoqeelwe ukuba bahlinzeke umVikeli woMphakathi ngolwazi lomkhokhintela. Ekuqaleni kwalo nyaka, ngaveza ngokucacile ukweseka kwami ihhovisi lomVikeli woMphakathi. Ezikhathini eziningi, mina nezisebenzi zami besisebenza ngokuzimisela ukuthola ulwazi olucelwe yihhovisi lakhe, futhi ngizoqhubeka nokwenza kanjalo. Ngaphinda ngazwakalisa isifiso sami sokuthi sikwazi ukuba nokuxhumana okuvulelekile, lapho sizoba nezingxoxo ezivulelekile, ezineqiniso futhi ezingagwegwesi uma kwenzeka kuba nokungavumelani.

9. Amasamanisi engikhishelwe wona angithusile, ngoba bengikholwa ukuthi izenzo zami ezinhle zizobuyiswa egameni lokubusa okuhle nomsebenzi wesishayamthetho phakathi kwezinhlela zikahulumeni ukuthi zisebenze ngokubambisana, zeseke futhi zihloniphane ngemisebenzi eziyenzayo kanjalo nemisebenzi ngokomthetho.

10. Ukuyisa lolu daba kumajaji kwakungekona enganginakho emqondweni kuqala. Bekungaba ngcono ukuba abakwa-SARS nehhovisi lomVikeli woMphakathi bebeluxazululile lolu daba ngaphandle kokuya ezinkantolo. Kodwa-ke, kukhona udaba olubalulekile lobumfihlo lolwazi lwentela okusengcupheni, engiphokelekile ukuthi ngikuqinisekise ukuze kusizakale bonke abakhokhintela. Imigomo ayigcini kuphela kubakhokhintela ababalulwe kumadokhumenti asenkantolo. Imigomo ithinta bonke abakhokhintela kanjalo nokusebenza kahle kuka-SARS. Uma kwenzeka ekuhambeni kwesikhathi kukhona phakathi kwabakhokhintela ovumayo ukuba ulwazi lwakhe lukhishwe, abakwa-SARS bazoyihlonipha leyo mvume. Kanjalo, uma inkantolo inquma ukuba abakwa-SARS kumele bakhophe ulwazi lomkhokhintela, nalapho ngizowuthobela ngokushesha lowo myalelo.

11. Ngokubona kwami, ukufuna ukucaciseleka kulolu daba ngikubona kukodwa nje kubalulekile kuNingizimu Afrika ebuswa ngokwentando yeningi futhi kwakhela ekugcwaliseni ukuzibophezela kwami ekwakheni kabusha ukwethenjwa emphakathini nokwethemba isikhungo sakwa-SARS. Isicelo esifakwe enkantolo abakwa-SARS senziwa ngalo moya.

12. Sithokozile ngomphumela wesinqumo senkantolo namuhla oqinisekise ukuthi izinhlangano zombili ngokuhlanganyela zizoxoxa nenkantolo ngodaba olubalulekile zibezombili zigcina amalungelo azo ngokomthetho.