

No.

OF

NOTICE 4109 OF 2000
THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION
TERMS OF REFERENCE
INQUIRY INTO SEXUAL OFFENCES AGAINST CHILDREN

A. Background:

1. In terms of Section 184 of the Constitution of the Republic of South Africa the South African Human Rights Commission has a mandate to:
 - “(a) promote respect for human rights and a culture of human rights;*
 - (b) promote the protection, development and attainment of human rights; and*
 - (c) monitor and assess the observance of human rights in the Republic”.*
2. The Human Rights Commission has the power, in terms of Section 184 (2) to:
 - “(a) investigate and to report on the observance of human rights;*
 - (b) take steps to secure appropriate redress where human rights have been violated “.*
3. The Bill of Rights (Chapter 2 of the Constitution) states, *inter alia*:
 - “28 (1) Every child has the right—*
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 - (d) to be protected from maltreatment, neglect, abuse or degradation”*
 - “10 Everyone has inherent dignity and the right to have their dignity respected and protected”*
 - “12 (1) Everyone has the right to freedom and security of the person, which includes the right—*
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 - (e) not to be treated or punished in a cruel, inhuman or degrading way”*
4. The Child Care Act, Number 74 of 1983 (as amended) provides for the protection, welfare and treatment of certain children, and for incidental matters.
5. The Sexual Offences Act, No. 23 of 1957 (as amended), deals with brothels, unlawful carnal intercourse and other conduct in relation to children and others.

B. Definitions:

- “Act”** refers to the Human Rights Commission Act (Act No. 54 of 1994).
- “Constitution”** refers to Republic of South Africa Constitution Act (Act No. 108 of 1996).
- “Chairperson”** refers to the Chairperson of the South African Human Rights Commission or a person designated by the Chairperson.

“Commission” refers to the South African Human Rights Commission as created by the Constitution

C. Terms of Reference

1. To investigate the incidence of sexual offenses against children relating to:
 - 1.1 Sexual abuse, rape, prostitution of children and any other sexual offences committed by any person.
 - 1.2 Cases of child victims in the above situations which have either not been reported to the relevant authorities, or not investigated or not properly investigated, or where prosecution has been declined.
2. To ascertain whether:
 - 2.1 The Criminal Justice System in Gauteng, Social Development Department of Gauteng, schools and any other NGOs and CBOS that work with the children in Gauteng, provide appropriate relief for children who become victims of sexual crime.
 - 2.2 The prosecutorial system is adequate and efficient in complaints relating to sexual offenses against children.
 - 2.3 The rights enshrined in the Constitution, domestic legislation, and in many international human rights instruments ratified by South Africa are observed in respect of children who are victims of sexual crime.
 - 2.4 The said rights are adequately implemented and if so, in what manner.
 - 2.5 There are violations of any of the rights in the Bill of Rights in the handling of such cases.
3. To establish, if possible:
 - 3.1 The underlying causes of any shortcomings in the various institutions, structures and persons not providing appropriate relief for children who are victims of sexual crimes.
 - 3.2 Appropriate and effective steps if any to be taken by the relevant persons to address such shortcomings.
4. To make findings and recommendations.

D. Rules and Procedures

1. The investigation and inquiry will be conducted in terms of the rules of procedure promulgated in terms of Section 9 (6) of the Human Rights Commission Act Number 54 of 1994, published in *Gazette* Number 17457 of 4th October 1996 read with these rules.
2. The Commission will call for submissions from interested parties including institutions, organisations and individuals on any matters referred to in the terms of reference of this investigation and inquiry.
3. The said submissions shall be lodged with or posted to the offices of the Commission at any of the addresses mentioned below. The Legal Department of the Commission will assist persons in formulating the said submissions. Submissions shall be in writing and must disclose the name, address and other contact details of the deponent. Anonymous submissions will not be entertained. Where however, the deponent does not wish to have his or her name published, the Commission will respect that wish. Such confidential submissions however, will not be able to form the basis of the findings.
4. The submissions shall be made by no later than 30th of November 2000.
5. The Commission shall furnish any person who has been implicated or likely to be implicated by those submissions, with a copy thereof. Such a copy shall be accompanied by a written notice requiring such person to:
 - 5.1 submit a written response to the submissions to the Legal Department of the Commission within 14 days of the delivery of such written notice;
 - 5.2 appear, before a panel of the Commission at a public hearing, to be held on a date to be announced, in the *Government Gazette*, in order to respond to the allegations against him or her.
6. The Commission will invite to that hearing specific individuals, organisations, institutions and any other interested parties to make oral submissions and give testimony at the public hearing. Such testimony shall be given under oath or affirmation.
7. Pursuant to the provisions of the Act a panel will preside over the Public Hearings. The Chairperson of the Commission or a person designated by the Chairperson, will chair the panel. The panel will consist of five persons, three of whom shall be members of the Commission.
8. The panel may subpoena any person in possession of any information or document relevant to the hearing to appear before the panel and give testimony.

9. The person referred to in (5) above shall be entitled to be represented by his/her legal representative and shall give his or her testimony under oath or affirmation. He or she will be given the opportunity to cross-examine any person who has given evidence before the panel.
10. **At the** conclusion of the hearing the panel will make findings and recommendations.
11. Such findings and recommendations will be made public.

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