

NOTICE 1803 OF 2004**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION****TERMS OF REFERENCE****INQUIRY INTO THE KHOMANI SAN**

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 of South Africa.

2. The South African Human Rights Commission has the power, in terms of Section 184(2) of the Constitution read with Section 9 of the S.A. Human Rights Commission Act No.54 of 1994:
 - (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) guarantees *inter alia*:-
 - Section 9 : The right to Equality;
 - Section 10 : The right to human dignity;
 - Section 12 : Freedom and security of the person;
 - Section 24 : Environment rights;
 - Section 26 : The right to housing;
 - Section 27 : The right to Health care, food, water and social security;
 - Section 29 : Right to education;
 - Section 30 : Language and cultural right;
 - Section 31: Cultural, religious and linguistic right;

Section 34 : Access to court.

B)

Definitions:

“Act”- refers to South African Human Rights Commission Act No. 54 of 1994.

“Constitution” – refers to Republic of South African Constitution Act No. 108 of 1996.

“Chairperson” – refers to the Chairperson of the South African Human Rights Commission or a person to the South African Human Rights Commission as created by the Constitution;

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

“Khomani San” – refers to the Khomani San Community of the Kalahari.

C)

Terms of Reference:-

1. To investigate the observance of Human Rights including the incidence of victimisation, harassment, neglect and, abuse of the Khomani San people as it relates to:

1.1 The conduct of the police in general towards the Khomani San and in particular –

1.1.1 The investigation into the shooting of the late Mr Optel Rooi; as well as subsequent steps / measures taken thereafter by the Independent Complaints Directorate and the Directorate of Public Prosecutions

1.1.2 Allegations of child sexual abuse and harassment in Ashkham school as well as subsequent steps / measures taken thereafter by the police ,department of education and other stakeholders.

2. To further ascertain whether:-

2.1 The promotion and protection of human rights has been realised by public and private role-players such as the departments of Agricultural and Land Affairs restitution programme ; Housing; Provincial & Local Government; Health; Welfare and Social Development; Education; Justice & Constitutional

Development; the CPA and other NGO's and CBO's that work with the Khomanani San Community, .

C)

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 South African Human Rights Commission Act No. 54 of 1994 published in Gazette Number 17457 of October 1996.
2. The Commission will call all for submissions from interested parties including institutions, organisations and individuals on any matters referred to in 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 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 together with disclosures made under the cover of the Protected Disclosures Act No. 26 of 2000. Such confidential submissions however, will not be able to form the basis of the findings.

4. The closing date for the submissions is the 27 September 2004. However, the HOD Legal may at his discretion consider late submissions.
5. The Commission may furnish any person who has been referred to or likely to be referred to by those submissions, with a copy thereof. Such copy may be accompanied by a written notice requiring such person to:-
 - 5.1 submit a written response to the allegations/submission to the Legal Department of the Commission within 14 days of the delivery of such written notice;
 - 5.2 appeal 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 may invite to the hearing specific individuals organisations, institutions and any other interested parties to make documentary and or oral

submissions and 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 Hearing and the Chairperson of the Commission or a person designated by him/her. The panel will consist of 5 (five) persons, three of whom shall be members of the Commission.
- 8. The panel may subpoena any person in possession of any information or documents relevant to the hearing to appear before the panel and give testimony.
- 9. The person referred to in 5, *supra*, shall be entitled to be represented by his/her legal representative and shall give his/her testimony under oath or affirmation.
- 10. At the conclusion of the hearing the panel will make findings and recommendations.
- 11. Such findings and recommendation will be made public

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION
JOHANNESBURG**

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