

NOTICE 1416 OF 2005

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THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION



***TERMS OF REFERENCE OF THE PUBLIC HEARING ON THE
RIGHT TO BASIC EDUCATION***

1. Introduction:

The right to basic education is a central facilitative right in our constitutional democracy. It is aimed at providing opportunities and gateways for ensuring the promotion and protection all other human rights and plays itself out in the most populated sector of our society. Approximately 12 million learners out of a total population of roughly 44 million people attend 27 647 schools in the country on a daily basis.'

The realization of the right to basic education is interdependent on the realization of other rights contained in the bill of rights? Section 29 of the Constitution provides for the right to basic education and states *inter alia* that everyone has the right to basic education and to receive education in an official language(s) of their choice in public educational institutions, where reasonably practicable.

The South African Human Rights Commission³ received a constant flow of complaints relating to the right to basic education. In fulfilment of its mandate, the Commission will therefore convene a public hearing on the right to basic education as experienced in the South African educational system.

The hearing will explore the meaning of the right to basic education and the context within which it is implemented in the country. Although basic education is part of a

¹ Department of Education: 2004: 4

² Chapter 2 of the of the Constitution of the Republic of South Africa Act 108 of 1996

³ Hereinafter referred to as the "Commission"

² The Constitution of the Republic of South African Act 108 of 1996

compendium of educational rights, this hearing will focus on the provision of education for learners aged between 7 and 15 years (or grade 9 whichever comes first).

2. Legislative Mandate of the Commission:

In terms of section 184 (1) of the Constitution, the Commission is mandated 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.

The Commission has powers in terms of section 184(2) of the Constitution read with section 9 of the South African Human Rights Commission Act 54 of 1994, to:

- (a) investigate and to report on the observance of human rights; and
- (b) **take** steps to secure appropriate redress where human rights have been violated;

3. Terms of Reference:

The hearing will focus on legislative and policy provisions relating to the right to basic education and the implementation thereof.

3.1 The hearing sets out:

- 3.1.1 to investigate the meaning of the right to basic education;
- 3.1.2 to explore the impact of the context in which basic education is delivered; and
- 3.1.3 to assess the realization of the right to basic education in the country.

3.2 The hearing will engage with the right to basic education within the following framework.⁴

- 3.2.1 Availability: refers to the provisioning of infrastructure such as buildings, sanitation, water, teachers, training materials, etc.

⁴ United Nations: Committee on Economic, Social and Cultural Rights: General comment on the Right to Education, 1999.

3.2.2 Accessibility: refers to non-discrimination, physical accessibility and economic accessibility of education.

3.2.3 Adaptability: refers to the capacity of the education system to adapt to the diverse needs of learners, parents and communities and in particular the vision of an inclusive education system.

3.2.4 Acceptability: refers to the forms and substance of education, including curricula and teaching methods.

3.3 The hearing will also consider significant issues relating to the right to basic education such as governance and management, labour relations and community participation.

3.4 The hearing will further explore the right to basic education from the perspective of the experiences of the vulnerable sectors in our society (farming communities, rural areas, townships, previously disadvantaged groups, etc).

4. Rules and Procedures:

4.1 The investigation and hearing 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, as published in Government Gazette Number 17457 of October 1996.

4.2 The Commission will call for submissions from the public and interested parties including institutions, organisations and individuals on any matters referred to in the terms of reference of this investigation and inquiry.

4.3 The submissions must be lodged with or posted to the offices of the Commission at any of the addresses mentioned below in paragraph 6.

4.4 The Legal Services Department of the Commission may assist persons in formulating their submissions. The submissions shall be in writing and must disclose the name, address and other contact details of the person making the submission. Anonymous submissions will not be entertained.

4.5 The Commission may publish all submissions. However, if a deponent who does not wish to have his or her name published, the Commission will respect such a wish together with disclosures made under the cover of the Protected Disclosures Act No. 26 of 2000. Such confidential submissions will be considered but they will not form the basis of the findings against individuals or institutions.

4.6 The closing date for submissions is 23 September 2005. However, the Head of the Legal Services Department may at her / his discretion consider late submissions.

4.7 The Commission will furnish any person or institutions that have been implicated or likely to be implicated in the submissions, with a copy thereof. Such a copy may be accompanied by a written notice requiring such person to:

- a) submit a written response to the allegations / submission to the Legal Services Department of the Commission within 14 days of the delivery of such written notice; and
- b) appear before a panel of the Commission at a public hearing to be held on a date and place to be announced in the Government Gazette, in order to respond to the allegations against him / her.

4.8 The Commission may invite specific individual organisations, institutions and any other parties to make documentary and / or oral submissions and testimony at the public hearing. Such testimony may be given under oath or affirmation.

4.9 A panel nominated by the Chairperson of the Commission will preside over the hearing. The Chairperson of the Commission or a person designated by the Chairperson, will chair the panel.

4.10 The panel may subpoena any person in possession of any information relevant to the hearing to appear before the panel and give testimony.

4.11 Only a person or institutions refer to in paragraph **4.7** may be entitled to legal representation under oath or affirmation.

4.12 At the conclusion of the hearings, the panel will make **findings** and recommendations.

4.13 Such **findings** and recommendations will be made public.

5. Definitions:

5.1 "Act" refers to the South African Human Rights Commission Act, No. **54** of **1994**.

5.2 "Constitution" refers to the Constitution of the Republic of South Africa, Act **108** of **1996** as amended.

5.3 "Chairperson" refers to the Chairperson of the South African Human Rights Commission or any person duly authorised.

5.4 "Commission" refers to the South African Human Rights Commission as established by section **181** of the Constitution.

5.5 "SASA" refers to the South African Schools Act, No. **84** of **1996**.

6. Contact Details:

Submissions should be addressed to Ms. Monique Davis and may be posted or hand delivered to the Commission as follows:

Postal Address: ***Physical Address:***

Private Bag X 2700

Houghton

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Human Rights House

No. 27 Princess of Wales Terrace

Cnr. St. Andrews and York Street

Parktown

Johannesburg

For **further** information regarding submissions and / or the hearings, kindly contact Ms. Monique Davis on:

Tel: (011) 484 8300 Ext 2334 / 2252

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