
GENERAL NOTICES ALGEMENE KENNISGEWINGS

NOTICE 1333 OF 2006

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

TERMS OF REFERENCE

PUBLIC HEARINGS ON INITIATION SCHOOLS:

1. Legislative Mandate of the Commission

1.1 In terms of section 184 (1) of the Constitution of the Republic of South Africa, the 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".

1.2 The Commission has the following powers, in terms of section 184 (2) of the Constitution read together with section 9 of the S A Human Rights Commission Act No 54 of 1994:

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

1.3 The Bill of Rights (Chapter 2 of the Constitution) guarantees *inter alia*:-

Section 10: The right to human dignity;

Section 11: The right to life;

Section 12: The right to freedom and security of the person;

Section 27: The right to health care, food, water and social security;

Section 30: Language and cultural rights;

Section 31: Cultural, religious and linguistic rights.

2. Definitions:

- 2.1 "Act" refers to the SA Human Rights Commission Act No 54 of 1994.
- 2.2 "Constitution" refers to the Constitution of the Republic of South Africa, Act 108 of 1996.
- 2.3 "Chairperson" refers to the Chairperson of the SA Human Rights Commission.
- 2.4 "Commission" refers to the SA Human Rights Commission as established by section 181 of the Constitution.

3. Background:

Initiation schools are part of our cultural practices in South Africa and are protected by the Constitution.¹ The schools are regarded as cultural educational institutions where initiates are taught about customary values and conduct.

However, over the past few years, there have been numerous complaints about some of these schools. Deadly infections, callous atrocities and abductions have become defining characteristics of some initiation schools. In some cases, under-aged children are taken to these schools without parental consent.

Many initiates have lost their reproductive organs due to the negligence of traditional surgeons who are often inadequately trained. Some surgeons have been found to be operating under the influence of alcohol and often use unsterile instruments, which may contribute to the spread of blood-borne diseases such as HIV/AIDS, Tetanus and other related diseases.

Recent media reports have suggested that "a total of 215 initiates have died and 118 others have lost their manhood in the Eastern Cape since 2001. More than 2000 have been hospitalised during the same period. In 2005 alone, 48 initiates died and 589 others were admitted to hospitals and there were 20 penile amputees."²

It has been established that some initiation schools are opened purely for economic reasons. For example, initiates are required to pay exorbitant fees. In addition, there is abuse of power by some traditional surgeons who are often inadequately trained to perform traditional circumcision.

¹ Sections 30 and 31 of the Constitution of the Republic of South Africa of 1996 (Act 108 of 1996)

² City Press, Sunday 02 July 2006

In trying to address the above-mentioned problems, some Provincial Governments such as Limpopo, Eastern Cape and Free State³ promulgated laws to ensure the safety of the initiates.

These laws deal with the observation of health standards in initiation schools; the granting of permission for the operation of circumcision schools and the granting of permission to conduct circumcision. Parental consent is also provided for if the boy is below a prescribed age.

In addition to the enactment of relevant legislation, national conferences and workshops were organized in the country to try and address these problems. Notably, the May 2004 Traditional Initiation Schools Conference and the South African Human Rights Commission workshop on Initiation Schools.

The 2004 Conference made the following recommendations:

- All provinces should hold individual conferences to discuss this matter as that is the level where all issues, especially diversity, can be discussed properly. All stakeholders should make an input at these conferences.
- Out of these conferences contributions will flow into the national framework which will culminate in a discussion paper where legalities can be addressed.
- A national co-ordinating committee under the National House of Traditional Leaders should be instituted to deal with the issue.
- A time frame for this co-ordinating committee and provinces to submit their report was set at 12 months.
- In these discussions reference must be made to the constitution and human rights, the legislative framework to regulate and control the practice, the training of practitioners to observe health requirements, the scourge of HIV/AIDS, code of conduct relating to the abuse of alcohol and drugs at the schools as well as the importance of these schools.
- Socio-economic issues must also be taken into consideration as culture often takes precedence over these issues. The issue of initiation can be used to address poverty alleviation, wealth creation, development, moral regeneration and to advance family values.

Despite all these measures, there are still problems encountered with some of these schools.

³ Northern Province Circumcision Schools Act of 1996 (Act No 6 of 1996), Application of Health Standards in Traditional Circumcision Act of 2001 (Act No 6 of 2001 and Free State Initiation School Health Act of 2004 (Act No. 1 of 2004).

In response to these issues, the South African Human Rights Commission (**the SAHRC**) together with the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (**the CRL**) and the National House of Traditional Leaders (**the NHTL**) decided to host National Public Hearings on initiation schools.

The Mandate of the CRL Commission is:

- a. To promote respect for and further the protection of the rights of cultural, religious and linguistic communities;
- b. To promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities;
- c. To foster mutual respect among cultural, religious and linguistic communities;
- d. To promote the right of communities to develop their historically diminished heritage; and
- e. To recommend the establishment or recognition of community councils in accordance with section 36 or section 37.

The Mandate of the National House of Traditional Leaders is:

- a. To advise the national government and make recommendations relating to any of the following:
 - i. Matters relating to traditional leadership;
 - ii. The role of traditional leaders;
 - iii. Customary law; and
 - iv. The customs of the communities observing a system of customary law;
- b. To investigate and make available information on traditional leadership, traditional authorities, customary law and customs.

The Public Hearings will be held in four places, namely, Bisho, Qwaqwa, Hammanskraal, and Johannesburg. The rationale for choosing these provinces is based on the high rate of deaths and penile amputees in those areas. Johannesburg will provide an opportunity for other provinces such as North West and Mpumalanga to participate in the Hearings.

The Hearings will take place over a period of twelve (12) days, three days will be spent in each place. Relevant parties will be given the opportunity to make oral and written submissions to the panel.

The hearings will be conducted in English however Interpreters will be provided for Sepedi, isiXhosa and Sesotho languages.

4. Terms of Reference

The hearing will focus on issues pertaining to the death and injury of initiates and will include the following:

- 4.1 Determine the cause of high number of deaths and penile amputees in the schools;
- 4.2 Assess whether or not legislative and policy provisions relating to initiation schools are sufficient to address the current crises including minimum age required for initiates. If not, should the laws be reviewed?
- 4.3 Investigate how many cases of deaths and other human rights violations associated with initiation schools have been reported and whether any convictions took place.
- 4.4 Determine what measures should be taken against traditional surgeons who do not comply with legislative requirements.
- 4.5 Explore the role of parents in supporting the initiates and what support structures are in place for family members who have lost their children.
- 4.6 Identify responses and roles of the government (in particular, Departments of Health, Safety and Security, Provincial and Local Government, and Social Development) and Chapter 9 Institutions (such as the SAHRC, the CRL, and the NHTL).
- 4.7 Identify the support structure that is available within the Traditional Leadership to protect the custom and advance its sacredness.

5. Rules and Procedures in terms of section 9 (6) of the South African Human Rights Commission Act 54 of 1994:

The Commission hereby determines the rules and procedures in conducting this Public Inquiry as follows:

- 5.1 This inquiry will be conducted in collaboration with the CRL and the NHTL.

- 5.2 A call for submissions from interested parties will be made on any matters referred to in the terms of reference of this investigation and inquiry.
- 5.3 The said submissions shall be lodged with or posted to the offices of the Commission at any of the addresses mentioned on paragraph 6.
- 5.4 The SAHRC, the CRL and the NHTL 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 deponent. Anonymous submissions will not be entertained.
- 5.5 The submissions may be published. However, if a deponent who does not wish to have his or her name published, such a wish together with disclosures made under the cover of the Protected Disclosures Act No 26 of 2000 will be respected. Such confidential submissions will be considered however, they will not form the basis of the findings against individuals or institutions.
- 5.6 The closing date for the submissions is **22 September 2006**. However, the Head of the Legal Department may at his discretion also consider late submissions.
- 5.7 The panel shall afford any person who has been implicated an opportunity to be heard in connection therewith by way of giving evidence or making of submission and such person or his /her legal representative shall be entitled to through the panel, to question other witnesses determined by the panel who have appeared before it.
- 5.8 The hearings shall be open to the public unless the Chairperson acting in consultation with the other members of the panel presiding over the hearing determines that the public disclosure of evidence would:
- (i) Prejudice or frustrate the successful conduct of the hearing;
 - (ii) Threaten the security of any person involved in the hearing.
- 5.9 Pursuant to the provisions of the Act, a panel will preside over the public hearing and the Chairperson of the Commission or any other person designated by him and a representative from the CRL and NHTL will constitute the panel.
- 5.10 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.

- 5.11 The person referred to in 5.10, above, shall be entitled to be represented by his/her legal representative and shall give his/her testimony under oath or affirmation.
- 5.12 The Commission may allow a member of staff to lead evidence in the proceedings and examine any person appearing before the panel.
- 5.13 The panel will produce a report containing its finding and recommendations.
- 5.14 The finding of the panel will be final in this regard.
- 5.15 The finding and recommendations will be made public in four languages which are English, Sepedi, isiXhosa and Sesotho.
- 5.16 The Commission may decide to institute legal action in any competent court in its own name or in the name of a complainant should the need arise.

6. Contact Details

Submissions should be addressed to Mr Phillip Mabiletsa of the Legal Services Department of the SAHRC at the following addresses:

Postal Address:

South African Human Rights Commission
Private Bag 2700
HOUGHTON
2041

Tel: 011 484-8300
Fax: 011 484-1360

Physical Address

Attention: Mr P Mabiletsa
South African Human Rights Commission
Cnr St Andrews and York Street
PARKTOWN
2198

By e-mail

Email address: pmabiletsa@sahrc.org.za