



THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

TERMS OF REFERENCE, RULES & PROCEDURES:

PUBLIC HEARING ON SCHOOL-BASED VIOLENCE

1. Introduction:

The safety of learners in schools has in recent years become a matter of national concern as many incidents of school-based violence are reported. Violence against learners has emerged in various forms from bullying, to daily assaults and even murders and /or deaths of learners occurring in or around school premises.

The cause of the upsurge in school-based violence has been attributed to numerous social-ills that filter onto school premises, including gender discrimination, gang related activities, drug and alcohol abuse, racism and reoccurring patterns of violence in the homes of learners. These factors result *inter alia* in school dropouts, academic underperformance, increased risk of teenage pregnancy and HIV/Aids infection amongst youth, overall community disintegration and a deterioration of teaching and learning environment.

It has been further suggested that an incapacity to administer discipline has amplified not only school-based violence against learners but also against educators, who in some instances have been victimized and /or intimidated by their learners.

Recent initiatives proposed by some provincial departments to curb school-based violence have been met with criticism, on the basis that certain measures would, if implemented, infringe learners' rights to dignity and privacy. Furthermore, arguments have been made that metal detectors and random searches of learners on school premises do not provide long-term solutions, as they do not address the source of the problem.

Numerous provisions contained in the Bill of Rights¹ protect the rights of learners to study in a safe environment, which is free from all forms of violence. Learners have the rights to, amongst others: freedom from racial and gender discrimination,² human dignity,³ life,⁴ freedom and security of person,⁵ to be protected from maltreatment, neglect and abuse or degradation⁶ and to a basic education⁷. These rights are or have the potential of being infringed by the perpetuation of school-based violence or the tangible threat thereof.

The South African Human Rights Commission⁸ has therefore decided to conduct a public hearing on school-based violence. This decision is based on the contention that without its immediate intervention the perpetuation of school-based violence may have a long-term impact on the human rights of affected persons. Recent events support the SAHRC's reasoning, as increased instances are reported in the media of learners carrying various types weapons to school.

The public hearing will be convened over a two-day period at a location to be announced shortly and will be presided over by a panel, which will be determined by the Chairperson of the SAHRC.

¹ Chapter 2 of the Constitution of the Republic of South Africa Act 108 of 1996

² Section 9(3)

³ Section 10

⁴ Section 11

⁵ Section 12

⁶ Section 28(d)

⁷ Section 29

⁸ Hereinafter referred to as the "SAHRC"

Submissions and participation are encouraged from all national and provincial stakeholders in order to gauge the extent of school-based violence, which is a national concern.

2. Legislative Mandate of the SAHRC:

In terms of section 184 (1) of the Constitution, the SAHRC 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 SAHRC 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:

- 3.1 The SAHRC will focus on the legislative and policy framework that seeks to ensure the safety of children at school and initiatives by government and civil society that seek to address violence in schools.
- 3.2 In realizing the purpose of the hearing, the SAHRC will seek to understand the causes of the violence by giving consideration to the following areas:
 - 3.2.1 The extent to which the human rights of learners and educators are impacted upon by school-based violence;
 - 3.2.2 The nature and extent of violence in schools;

- 3.2.3 The role of the community and other structures in dealing with the incidence of violence against learners;
 - 3.2.4 The psycho-social consequences of school-based violence for both learners and their communities;
 - 3.2.5 The causes of school-based violence and contributing factors thereto;
 - 3.2.6 The role and responsibility of various government structures in addressing the incidence of school-based violence;
 - 3.2.7 The reasonable responsibility of educators in ensuring school safety;
 - 3.2.8 The impact of violence on educators, learners and communities;
 - 3.2.9 Assess the extent of interdepartmental cooperation in ensuring the safety of learners;
 - 3.2.10 The prevalence of gender-based violence against female learners;
 - 3.2.11 The success or shortcomings of initiatives taken by the national and /or provincial departments⁹ in addressing the systemic problems threatening the safety of learners.
- 3.3 Flowing from information received during the course of the public hearing on these issues and submissions presented to the panel, the SAHRC will produce a report containing findings and recommendations on school-based violence.

⁹ E.G: Youth Violence Prevention Programme's and Safe Schools Programmes

4. Rules and Procedures:

- 4.1 The hearing will form part of the SAHRC's investigation into school-based violence and is regulated by section 9(6) of the South African Human Rights Commission Act. No 54 of 1994¹⁰, as published in Government Gazette Number 17457 of October 1996.
- 4.2 The SAHRC will call for submissions from relevant government departments, members of the public and any other interested parties who may make a contribution to the investigation.
- 4.3 The submissions must be lodged with or posted to the offices of the SAHRC at any of the addresses mentioned below. Electronic submissions will only be accepted at the email addresses listed below.
- 4.4 The Legal Services Department of the SAHRC 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.
- 4.5 The SAHRC may publish all submissions. However, if a deponent who does not wish to have his or her name published, the SAHRC will respect such a wish together with disclosures made under the cover of the Protected Disclosures Act No. 26 of 2000.
- 4.6 The closing date for submissions is **12 September 2006**. However, the Head of the Legal Services Department may at his discretion consider late submissions.

¹⁰ Hereinafter referred to as "Act 54 of 1994"

- 4.7 The SAHRC 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.
- 4.8 A panel nominated by the Chairperson of the SAHRC will preside over the hearing. The Chairperson of the SAHRC will determine the size of the panel.
- 4.9 The Chairperson of the panel shall at the commencement of the hearing inform all persons appearing before the SAHRC of the nature of the complaint before the SAHRC and the purpose of the hearing.
- 4.10 The Chairperson of the panel or a Commissioner may administer the oath or affirmation contemplated in section 9(1)(d) of Act No. 54 of 1994 to all persons who give evidence before the SAHRC and warn them of their rights and obligations under Act No. 54 of 1994.
- 4.11 The panel may subpoena any person in possession of any information relevant to the hearing to appear before the panel and give testimony.
- 4.12 Persons giving evidence before the SAHRC may do so in any of the official languages of the Republic. Due notice must be given to the SAHRC if the services of an interpreter will be required by any person making an oral submission or giving evidence to the panel.
- 4.13 The SAHRC may authorise a duly qualified member(s) of staff to lead evidence in the proceedings and examine any person appearing before the panel.
- 4.14 The panel may pose questions of clarity to any person(s), institution or organisation giving evidence and/or making an oral presentation before it.
- 4.15 The SAHRC shall afford any person who has been implicated in the matter before the SAHRC, an opportunity to appear before the SAHRC.

- 4.16 The hearings of the SAHRC shall be open to the public unless the Chairperson of the panel in consultation with the panel presiding, determines that the public disclosure of evidence would:
- (i) Prejudice and / or frustrate the successful conduct of the hearing;
 - (ii) Threaten the security of any person involved in the hearing;
- 4.16 The panel will produce a report containing its finding and recommendations, which will be launched by the SAHRC and made available to the public, on a date to be announced.
- 4.17 The findings of the SAHRC will be final.
- 4.18 The Head of the Legal Services Department may institute legal action in any competent court in the name of the SAHRC or in the name of a complainant at the conclusion of any investigation or public hearing.

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 by him as Chairperson of the panel.
- 5.4 “SAHRC” refers to the South African Human Rights Commission as established by section 181 of the Constitution.

6. Contact Details:

Submissions can be addressed to Ms. Monique Davis and may be posted or hand delivered to the SAHRC at:

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