

**RULES GOVERNING PROCEEDINGS**

**OF**

**THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION NATIONAL INVESTIGATIVE HEARING INTO THE JULY UNREST ESPECIALLY IN GAUTENG AND KWAZULU-NATAL PROVINCES**

**[OCTOBER 2021]**

**Introduction**

In July 2021, civil unrest occurred in South Africa’s KwaZulu-Natal and Gauteng provinces resulting in widespread looting and riots.

Following the South African Human Rights Commission’s (Commission) site inspections in KwaZulu-Natal and Gauteng and a national *imbizo*, the Commission resolved to convene a National Investigative Hearing to address some of the concerns emerging from the unrest that gripped the country and the July *imbizo*. The findings of the National Investigative Hearing will inform the Commission’s recommendations and directives.

Section 15 of the South African Human Rights Commission Act (SAHRC Act), headed “*Investigations by Commission*”, sets out the Commission’s investigatory powers.3 Section 15(1) of the SAHRC Act states that the Commission may, in the exercise its powers and to perform its functions, conduct or cause to be conducted any investigation that is necessary for that purpose.

In addition to the SAHRC Act, the Commission has a published Complaints Handling Procedure.[[1]](#footnote-1) The Complaints Handling Procedure governs every investigation, and permits deviations from its provision where circumstances of a particular investigation require (article 1(3)).

The Commission has determined the Rules set out herein as the Rules that govern its procedures for purposes of this National Investigative Hearing. The hearing will be conducted in accordance with the Constitution, the SAHRC Act, the Commission’s Terms of Reference, and any other applicable law and these Rules.

1. **Definitions**

Unless otherwise stated or the context indicates otherwise, in these Rules-

* 1. “**Act**” means the South African Human Rights Commission Act 40 of 2013;
	2. “**Chairperson**” means Commissioner Gaum in his capacity as the Chairperson of the Hearing Panel;
	3. “**Chief Panellist**” refers to Commissioner Ntuli in her capacity as the Chief Panellist of the Hearing Panel;
	4. “Panellist” refers to members of the panel, comprising the Chair and Deputy Chair of the panel, chief panellist and other expert members appointed by the Commission;
	5. “**Commission**” means the South African Human Rights Commission;
	6. “**Constitution**” refers to the Constitution of the Republic of South Africa, 1996;
	7. “**Deputy Chairperson**” means Commissioner Nissen in his capacity as the Deputy Chairperson of the Hearing Panel;
	8. “**Evidence**” includes but is not limited to any document, affidavit, video, sound recording, photograph or oral testimony submitted to the Hearing Panel;
	9. “**Hearing’s Legal Team**” means the team of legal practitioners appointed by the Commission to assist the Commission in the investigation, including the presentation of evidence and arguments before the Hearing Panel in regard to matters referred to in the Terms of Reference;
	10. “**Legal representative**” means a practising advocate or attorney; alternatively, a person who has been admitted and enrolled as an attorney or an advocate in terms of the South African law.
	11. “**Person**” includes both a natural and juristic person.
	12. “**Personal information**” means all information of a personal and private nature pertaining to an individual including but not limited to private addresses, private telephone numbers, private family information and details of medical conditions;
	13. “**Rules**” means these rules as may be amended from time to time;
	14. “**Terms of Reference**” means the terms of reference for the National Investigative Hearing published on the Commission’s website;
1. **Hearings to be held in public**
	1. The Hearing Panel has determined that these proceedings should be open to the members of the public and the media having regard to:
		1. The public interest nature of this matter;
		2. The constitutional obligations of the Commission to observe the principles of accountability, openness and transparency; and;
		3. The legal obligations arising from the national state of disaster regulating the permissible number of persons who may be in attendance at the venue where proceedings are convened
	2. In an appropriate case, the Chairperson, after consultation with the Hearing Panel, may make an order that a hearing be held *in camera*. In such a case, the Chairperson shall specify the procedure regulating *in camera* proceedings.
	3. At the request of the witness whose evidence is to be heard *in camera*, or, *mero moto*, the Chairperson, after consultation with the Hearing Panel, must order that nobody may, directly and indirectly, disclose the identity of the witness who is to give evidence *in camera*.
2. **The Hearing Panel to keep the public informed**
	1. The Commission must regularly inform the public of the matters to be covered at the hearings through media interviews and by publishing the relevant information of the Commission’s website and social media platforms.
3. **Methodology and hearing process**
	1. The proceedings are “*inquisitorial in nature*”, and will be presided over by the Hearing Panel.
	2. The proceedings are formal. As required, in terms of section 15(1)(d) of the SAHRC Act, a Commissioner will administer an oath to or take an affirmation from the witnesses.
	3. The Chairperson or any member of the Hearing Panel, shall administer an oath or affirmation to a witness before the witness may commence giving evidence.
	4. Both written and oral submissions from identified stakeholders and other interested parties will be received.
	5. Identified stakeholders and interested parties will be required to provide information and responses to specific questions.
	6. Selected stakeholders will be invited to appear before the Hearing Panel to provide summarised presentations and answer questions under oath or affirmation.
	7. Proceedings will be recorded and transcribed.
	8. A witness may apply to the Chairperson, at least a week before he or she is scheduled to appear at a hearing, to have his or her evidence taken *in camera*. Such application must be in writing and must provide reasons why such an order should be made. The Chairperson will decide the application at his discretion.
	9. The Panel may exercise its powers in terms of Section 22 of the Act to compel the production of information through the issue of a notice to compel.
	10. A failure to comply with a notice issued in terms of Section 22, or the provision of false information to the Panel, shall be subject to the provisions of the Act which provides penalties in the form of fines or imprisonment for such contempt or criminal offense.
4. **Witnesses presented by the Hearing’s Legal Team and implicated persons and their evidence**
	1. Subject to anything to the contrary contained in these Rules or to the Chairperson and Hearing Panel’s directions with regard to any specific witness, the Hearing’s Legal Team bears the overall responsibility to present the evidence of witnesses to the Hearing Panel.
	2. A member of the Commission’s Legal Team may put questions to a witness whose evidence is presented to the Hearing Panel by the Commission’s Legal Team including questions aimed at assisting the Hearing Panel in assessing the truthfulness of the evidence of a witness. Subject to the directions of the Chairperson and the Hearing Panel, the Hearing’s Legal Team may ask leading questions.
	3. If the Hearing’s Legal Team intends to present to the Commission a witness, whose evidence implicates or may implicate another person, it must through the National Hearing Coordinator, notify that person (“implicated person”) in writing within a reasonable period of time
	4. In accordance with section 15(5) of the SAHRC Act, there is no right to cross-examine a witness before the Hearing but the Chairperson, after consultation with the Hearing Panel, may permit cross-examination should he deem it necessary and in the interests of the work of the Hearing Panel to do so.
	5. Such implicated person is entitled to, through the Commission’s Legal Team, direct questions to other witnesses.
	6. The opportunity afforded to the implicated person to put questions to witnesses should be done through further written submissions.
	7. Alternatively, the Hearing’s Legal Team may require that a party submit to it a written list of questions for a witness, to be directed by the Hearing’s Legal Team to a witness orally in the same sitting, or in a different sitting.
	8. Parties will be given an opportunity to make further written submissions, on receipt of the provisional findings by the Hearing Panel.
	9. Oral testimony must be made by the parties themselves, and any legal argument (in particular, in the closing statements) may be made via legal representatives.
	10. Witnesses will be called to give oral evidence before the Hearing at the discretion of the Investigative Hearing’s Legal Team.
	11. A witness appearing before the Hearing may be assisted by a legal representative, but a witness may not respond or present information through a legal representative unless such person is a minor
	12. The order or sequence in which witnesses will be called before the Investigative Hearing will be subject to the discretion of the Investigative Hearing’s Legal Team.
5. **Evidence presented to the Investigative Hearing**
	1. The Investigative Hearing may receive any evidence that is relevant to the terms of reference and its mandate, including evidence that might otherwise be inadmissible in a court of law. The rules of evidence applicable in a court of law need not be strictly applied to the determination of the admissibility of the evidence before the Investigative Hearing.
	2. Anyone who has knowledge of the matters that fall within the Terms of Reference for the Investigative Hearing may deliver to the Coordinator of the Hearing a statement or affidavit setting out that information and the Coordinator will hand it over to the Investigative Hearing’s Legal Team for consideration.
	3. Affidavits or statements that are submitted to the Investigative Hearing should:
		1. Be formatted in numbered paragraphs, and
		2. Include an index and subject matter headings if the statement or affidavit is more than five pages in length.
	4. Where a person seeks to provide expert evidence to the Investigative Hearing, his or her evidence must include a summary of relevant qualifications and experience, a summary of the expert’s opinion, as well as an explanation of the relevance of the expert’s testimony to the work of the Investigative Hearing.
	5. Where the evidence intended to be placed before the Investigative Hearing has previously been placed before another Inquiry or tribunal or Court or body, that fact must be disclosed by the person submitting that evidence in order for the Investigative Hearing to secure the relevant transcript in respect of those proceedings.
	6. The Panel shall determine whether which records or parts of records provided in the course of the investigation may be made public upon request for such record. Records or information provided to the Hearing which carry restricted classifications shall be treated as such unless to the knowledge of the Panel such record or information has already been made public.
6. **Call for documents**
	1. In terms of section 15 of the SAHRC Act, the Chairperson may summon any person to produce a document in his or her possession or under his or her control which has a bearing on the matter being investigated.
	2. Any person to whom such a subpoena to produce a document is directed must, within 7 days of receiving such a notice, produce documents requested or submit an affidavit to the Investigative Hearing explaining why those documents cannot be produced.
	3. Should a person claim that a document referred to in the subpoena notice is subject to legal professional privilege, he or she must:
		1. Identify the document in respect of which privilege is claimed; and
		2. Explain the basis for the claim of privilege in relation to each document.
		3. Should a person claim that a document referred to in the summons is confidential for a reason other than that it is subject to legal professional privilege, such as that it is commercially sensitive or includes personal information, he or she must produce the document but must specify that the document, or part of it, should not be made public and must make application for the document (or part of it) to be treated as confidential

in the investigation of the Commission. The application must be in writing and clearly and succinctly indicate:

* + - 1. The specific portions of document which are claimed to be confidential; and
			2. The reasons why those portions should not be publicly disclosed.
	1. The Chairperson shall consider all claims of confidentiality for documents provided to the Investigative Hearing and shall rule on whether the document will be treated as confidential.
	2. If the document (or part of it) is determined to be confidential, it will not be included (or included only in redacted form to protect the confidentiality) in any of the Hearing’s publications nor referred to, in relevant part, in public hearings.
	3. If the document is determined not to be confidential, it may be referred to in the Hearing’s publications and at public hearings.
	4. The Hearing shall notify the person who made a claim of confidentiality for a document of the Chairperson’s determination prior to the document being referred to in a publication or at a public hearing.
1. **General**
	1. Any party wishing to make any application to the Hearing which is not otherwise provided for in these rules must do so on at least seven calendar days’ notice in writing to the Hearing but the Chairperson may condone non-compliance with this notice period on good cause shown.
	2. The Investigative Hearing may condone non-compliance with, or extend, any time-frame provided for in these Rules on good cause shown or when it is in the interests of the work of the Hearing to do so.
2. **Directions**
	1. The Chairperson may issue practice directions from time to time in regard to the proceedings of the Hearing.
3. **Amendment of Rules**
	1. The Chairperson, in consultation with the Hearing Panel, may amend these Rules from time to time.
4. **Citation of Rules**
	1. These Rules shall be called the Rules of the South African Human Rights Commission National Hearing into the July Unrest in Especially Gauteng and KwaZulu-Natal Provinces.

Issued on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ October 2021

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Adv. Andre Gaum

Commissioner at the South African Human Rights Commission

And

Chairperson of the Hearing Panel

1. The Complaints Handling Procedure replaced the prior procedure in Government Notice 1483 in *GG* 41362 of 29 December 2017, and is in force from 1 January 2018. The Complaints Handling Procedure may be accessed on the website of the Commission: www.sahrc.org.za [↑](#footnote-ref-1)