

**South African Human Rights
Commission**



**REPORT INTO INITIATION PRACTICES
AT EDUCATIONAL INSTITUTIONS
AND A PRELIMINARY REPORT
ON CULTURAL INITIATIONS**

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Human
rights
commission**

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PREFACE

The inquiry into initiation practices at educational institutions was requested by the Minister of Education. Cultural initiations came into focus as a result of deaths of initiates and complaints received by the SAHRC. An inquiry was subsequently also launched into cultural initiations. The results of the latter inquiry are only of a preliminary nature.

South Africa is now a constitutional state, therefore, all aspects of our society must stand the test of constitutional scrutiny. Those practices in conflict with the values and principles embedded in our Constitution must be weeded out.

The Legal Services Department of the SAHRC, especially Mr Mxolise Maome, deserve praise for their dedication and support. Commissioners Pansy Tlakula and Charlotte McClain served on this *ad hoc* committee and were always prepared to offer advice and support.

The results and recommendations belong to the SAHRC and not the committee or any individual.

LEON WESSELS

Convenor: *Ad hoc* committee

PART A

BACKGROUND TO THE INVESTIGATION

1. At the beginning of the academic year of 2001, a student from a residence at Stellenbosch University died during an initiation ceremony at the University. During the same period the Minister of Education, Prof Kader Asmal (hereinafter the "Minister"), also received numerous letters from members of the public, especially parents and former students at both schools and higher education institutions in South Africa. These individuals alleged that in many educational institutions, unacceptable initiation practices continue to occur, and requested that an investigation be conducted into such practices at these educational institutions.
2. The Minister therefore approached the South African Human Rights Commission (hereinafter the "SAHRC") to request an investigation into initiation practices at both schools and higher education institutions with a view to making recommendations directed at the institutions as well as government, with the objective that any such recommendations should assist in the regulation of initiation practices which could cause harm to learners and students.
3. The SAHRC is a National Institution established in terms of Section 184 of the Constitution of the Republic of South Africa Act 108 of 1996 (hereinafter the "Constitution"). The function of the SAHRC is the promotion; protection and monitoring of the rights entrenched in Chapter 2 of the Constitution. The SAHRC is empowered both in terms of the Constitution¹ and its enabling Act² in the fulfilment of its mandate.
4. The SAHRC in terms of its powers undertook to investigate initiation practices at education institutions. The SAHRC in doing this adopted an investigative process that sought to address initiation practices on a systematic basis, rather than target individual institutions. Accordingly, the process adopted is non-adversarial in nature and does not make findings against any particular institution.

¹ Section 184 (2) of the Constitution:

"The Human Rights Commission has the powers as regulated by national legislation, necessary to perform its functions, including the power-

- (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;
- (c) ..
- (d) .."

² Section 7 Act 54 of 1994

SUMMARY OF THE MINISTERIAL FILE

5. The Minister on requesting an investigation also provided the SAHRC with a file containing correspondence and newspaper clippings pertaining to initiation practices. The file contained material detailing, both, specific instances of initiations at the various institutions, and provided information of various institutional attempts at addressing initiations. Summaries of the nature of the material in the file are set out below. These summaries, as stated above are not factual findings against the institutions, as many of them have not had the opportunity to respond to the allegations made against them by the individuals concerned. The summaries serve mainly to provide a contextual and analytical basis to highlight the various practices and to demonstrate further how these were addressed by individual institutions. The names of the relevant institutions are therefore omitted from the report.

(i) Schools

6. On the 23 April 2001, a newspaper reported on an incident concerning learners at a high school. In terms of which it was reported that, whilst on a school rugby tour, senior players of the school called the junior players to the back of the bus where they were assaulted by the senior players in an initiation ritual. The assault included being hit with a cold-drink bottle. The article reported on the disciplinary steps being taken at the school against the senior players, which entailed doing cleaning and repair work at the school for the duration of the term. Criminal charges against the senior players were withdrawn. The article further reported that the Principal of the school had said that the punishment imposed was appropriate as it sought not to affect the senior players matric year preparations. The article noted further that the Principal had said that the fact that a half litre bottle as opposed to a 2-litre bottle was used in the incident indicated that the incident was exaggerated in the media. From the article it appears that school personnel were not on the bus, but were travelling in another vehicle, and that learners were therefore unsupervised.
7. On 28 March 2001, a newspaper reported on an incident that occurred at a high school. According to the article the school learners got together in a "spirit building session" in preparation for the annual athletics meeting to "initiate their cheerleaders". Three springhares were released onto the rugby field when one of the learners kicked the hares leading to a "free for all" and killing at least one of the hares. The article quoted the Principal of the school as saying that such acts were done by "everybody" at some point in their lives and that it was impossible for the teachers to stop the learners once the hares were released. The article made reference to the fact that certain parents claimed that their children were having nightmares as a result of the incident.
8. In January 2000, the Minister received a complaint from a parent of a learner in high school. The parent alleged that at the end of 1999, she received a letter from the school her daughter was to enter as a grade eight learner the following year. The letter listed the initiation practices her daughter would have to observe as a new

learner. According to the parent, the list was designed to humiliate the new learners³. The parent complained further that the nature of these practices failed to take into account any physical or emotional difficulties that new learners may suffer from, or that some of the practices may be contrary to beliefs held by learners. She complained that despite a Department of Education directive that the list of practices would not be observed following negative media publicity relating to such practices, the Principal had announced that the practices would continue. When she voiced her concerns to members of the Department of Education that the practices would continue she was not treated with any degree of seriousness. The parent in her letter stated further that even though she had been informed that no new learner would be forced to observe the practices, no measures had been put in place to prevent reprisals to new learners who chose not to observe the initiation practices.

9. On 17 January 2001, the Minister received a letter of complaint from a parent of a grade eight learner in high school. According to the parent, he had received an information brochure, indicating that only the prefects are allowed to conduct initiations, the brochure also indicated the activities of each day. He was satisfied that a degree of care would therefore be exercised in the initiation activities of the school. His son however, was later initiated by being asked to indicate where the "heart" of a learner belonging to that particular school was situated. When he indicated that he did not know, the prefect pointed to his genitals and stated that was where the "heart" of a learner was situated. The grade eight boys were then required to pretend to be 'drilling for water with their genitals,' in the presence of and to the amusement of those present. The parent went on to say that the name and number given by the school to parents of the learners in the information brochure in regard to concerns or complaints they may have regarding the practice of initiations was that of the head prefect at the school. The parent therefore chose not to contact the head prefect as indicated in the information brochure, as the prefect would have most likely been one of the perpetrators of the initiation but opted instead to approach the Chairperson of the school governing body to raise his concerns over the incident. In the discussion that followed, the Chairperson, who would also conduct any future inquiry into the incident, informed the parent that he would "fight" to protect the integrity of the school and stated further that the son would have to testify at any future inquiry. The parent was unhappy with this since the allegations regarding the incident had been admitted to, and his son's testimony was in his opinion not necessary. He felt therefore that this was an attempt to intimidate his son. He opted instead to remove his son from that particular school.

³ The letter titled "Alternatives to Grade 8 Learners" includes amongst other practices: being forbidden to use the toilet at certain times or to use the tuck shop; being require to behave as fools and carry the bags of senior learners; remain in restricted areas etc.

(ii) Higher Education Institutions

10. On 5 March 2001 the Minister received a complaint from a parent of a first year student at a teaching college. The parent complained of the initiation practices at the residences of universities and colleges. She complained that first years at her daughter's residence were deprived of sleep by the senior students and house committee leaders. According to her the first year students were constantly called to "meetings" in the middle of the night; forced to learn the names and write tests on the names of the senior students; were forced to go to functions where alcohol was abused and were prevented from speaking to their families over the telephone during the initiation process. According to the parent, these practices prevented the first years from studying and completing work assignments.
11. In late February 2001 a second year student was hit and killed by a car during an initiation ritual of a student from one of the university residences. In terms of a press release from the ministry dated 1 March 2001, second year students have their hair shaven off, are painted all over their bodies and finally they are dropped off outside the town naked and must find their way back to the hostel. It is only after this act that they are regarded as members of the hostel. The student was killed on his way back to the university. This incident followed a flood of correspondence to the Ministry detailing past and current initiation practices at the university.
12. In March this year, following comments made by the Minister in the media in relation to initiation practices, one particular university entered into correspondence with the Minister in order to describe to him some of the steps being taken by the administration of that university in order to regulate initiation practices. In terms of which a code was introduced setting the parameters within which initiations would be acceptable. The code however did not abolish initiations. The reasoning for this is reflected by the Dean of Students at which he states that "enforced abolishment of an induction programme designed to establish a cohort of students subscribing to and identifying with a common spirit or ethos may lead to precarious and concealed initiation practices." He goes on to say that that the university's approach to transformation is an evolutionary one and that, "...for this reason we cannot consider it unwise to forcefully employ measures that can be construed as artificial integration or deliberately designed to maintain forms of segregation or alienation of students without concern for the needs of individuals as expressed by themselves."

THE SAHRC INVESTIGATION

13. The SAHRC investigation into initiation practices at education institutions involved three phases.
14. The first was to by way of a press release to invite all interested parties to make submissions regarding initiation practices at education institutions. The submissions received did not contain information pertaining to any other institutions, but instead were submissions highlighting some of the practices at those institutions that were already contained in the ministerial file.
15. Secondly, the SAHRC undertook a study of the constitutional and legal implications of initiations practices in terms of the facts outlined in the file. Such constitutional and legal analysis is dealt with below.
16. Thirdly, the SAHRC conducted random visits of schools and higher education institutions. Not all of the institutions mentioned in the ministerial file were visited. The SAHRC also visited certain institutions not mentioned in the ministerial file. The objective of the visits was to:
 - Determine how individual institutions and its students or learners understood and absorbed the Bill of Rights as part of its institutional culture.
 - Develop a general understanding of how different and diverse institutions within South Africa inducted their new students or learners.
 - Determine whether the preliminary observations and recommendations of the SAHRC in the preceding stages of the investigation regarding initiation practices could be confirmed by the visits.
17. The observations made in this report and which appear below are accordingly based on both details contained in the ministerial files and observations made during the SAHRC visits.

RELEVANT CONSTITUTIONAL PROVISIONS

18. Below is an analysis of the meaning and content of some of the rights likely to be violated within the context of the above-mentioned initiation practices. Due to the wide range of circumstances and effects of the various initiation practices which take place, the focus of this report falls on those rights which are most likely to be violated by such practices. Notwithstanding this narrower focus, it should be understood that initiation practices can, in fact, depending on the particular circumstances, result in the violation of a wider spectrum of rights.

SECTION 10 HUMAN DIGNITY

19. In terms of which:

"Everyone has inherent dignity and their right to have their dignity respected and protected"

According to Chaskalson et al, "Section 10 provides no definition of "dignity". It is in the demarcation of the boundaries of the concept of dignity, and not solely in the manner in which the right to its protection is to be identified."⁴ Its role and value are however at the basis of the value system which underpins our culture of human rights. In *S v Makwanyane & another*⁵ the court held:

"The importance of recognizing dignity as a founding value of the new Constitution cannot be over emphasized. Recognizing a right to dignity is an acknowledgment of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern. The rights therefore are the foundation of many other rights.. In chapter 3."

20. The term "protect" in terms of Section 10, it may be argued furthermore, places a positive obligation on the state to ensure the development of a society that embraces a culture of dignity and human rights. In terms of which it has been held in *S v Williams*:⁶

"The government has a particular responsibility to sustain and promote the values of the Constitution. If it is not exacting in its acknowledgement of those values, the Constitution will be weakened. A culture of authority which legitimates the use of violence is inconsistent with the values for which the Constitution stands."

21. An institutional culture therefore which actively endorses, or at the very least does nothing to eradicate initiation practices which undermine the self-esteem of individuals and/or which subjects individuals to humiliating and violent acts undermines the constitutional guarantee to dignity in the Bill of Rights. As stated above, furthermore, the State has a positive obligation to eradicate those practices, which legitimate the use of violence as being contrary to the values in the Constitution.

22. This positive obligation of State to take prompt and effective action to eradicate those practices which legitimate the use of violence is further emphasized by Section 7(2) obligation on the State to "protect" those rights in the Bill of Rights when read with Section 237 which requires that:

"All constitutional obligations must be performed diligently and without delay"

⁴ Chaskalson *et al* Constitutional Law of South Africa, Human Dignity, Juta at pg 17.4

⁵ 1995(3)BCLR 665 (CC) at para 328-30.

⁶ 1995(7)BCLR 861 (CC) at par 5

SECTION 12: FREEDOM AND SECURITY OF THE PERSON

23. In terms of which

"(1) Everyone has the right to freedom and security of person, which includes the right-

....

(c) to be free from all forms of violence from either public or private sources;

(d) not to be tortured in any way; and

(e) not to be treated or punished in a cruel, inhuman or degrading way."

The Constitutional Court, in interpreting this section in cases dealing with the constitutionality of punishments such as corporal punishment and the death penalty⁷, held that it must conform to the requirements of the right to dignity if it is **not** to be found to be cruel, inhuman and degrading.

24. Furthermore in terms of Section 39 of the Constitution, international law is an important interpretive tool.⁸ Thus the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its preamble recognises "the inherent dignity of the human person" and refers to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no-one shall be subjected to torture, or to cruel, inhuman or degrading treatment or punishment.⁹ South Africa has ratified this Convention on 10 December 1998.

25. Institutional violence such as corporal punishment and the death penalty, which have been meted out in terms of criminal sentencing or, for reasons of disciplining learners at schools, are found to be cruel and degrading and therefore unconstitutional. If these practices are unconstitutional, no valid basis could exist for initiation practices that are arbitrary acts without any basis for the harm that such practices can cause. Accordingly, initiation practices that involve to acts of violence or the degradation of the individual learner or student should be regarded as in conflict with the Constitution's commitment to the rights of dignity and freedom and security of person.

⁷ See *S v Makwanyane & another* 1995(3)BCLR 665 (CC) at para 328-30

⁸ In terms of Section 39 (1) When interpreting the Bill of Rights, a court, tribunal or forum-

...

(b) must consider international law; and

(c) may consider foreign law.

⁹ See *Christian Education SA v Minister of Education* 2000 (10) BCLR 1051 (CC) at par 13

SECTION 28 CHILDREN

26. In terms of which:

"Every child has the right -

....

(d) to be protected from maltreatment, neglect, abuse or degradation."

In interpreting the meaning of this section, regard must be had to international law. South Africa has ratified the United Nations on the Rights of the Child.¹⁰ The Convention clearly places a positive obligation on nation states to protect children from abuse. Such a positive obligation was recently confirmed in the Constitutional Court decision of *Government of the Republic of South Africa and Others v Grootboom and Others*¹¹ where the court stated:

"In the first place, the State must provide the legal and administrative infrastructure necessary to ensure that children are accorded the protection contemplated by Section 28. This obligation would normally be fulfilled by passing laws and creating enforcement mechanisms for the maintenance of children, their protection from maltreatment, abuse, neglect or degradation, and the prevention of other forms of abuse mentioned in Section 28"

In terms of which it may be argued, that the State is thus obliged to establish a regulatory and enabling environment for the protection of children from torture, cruel, inhuman or degrading treatment or punishment inconsistent with a child's human dignity.

Article 37 provides that:

"(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment."

Article 19 provides that;

- "1. State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has care of the child.
2. Such protective measures should as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, heretofore, and as appropriate, for judicial involvement."

Article 28 (2) requires that:

"State Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."

¹¹ 2000(11) BCLR 1169 (CC)

SECTION 9 EQUALITY

27. In terms of which:

- "(3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.**
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3)"**

The test to determine whether or not differentiation amounts to unfair discrimination involves a two-stage approach. The first question is whether the distinction is discriminatory. Differentiation on a listed ground amounts to discrimination. If the differentiation is based on a ground other than those listed, discrimination will be found only if the basis for the differentiation is potentially destructive of fundamental human dignity or is potentially harmful in a potentially serious way. The second question to establish is whether or not the discrimination is unfair: If discrimination is established, its unfairness is rebuttably presumed if it is based on one or more listed grounds. If it is not so based, the complainant must establish unfairness, which will turn largely on the impact of the discrimination on the complainant and others in a similar situation.¹²

28. In terms of the above approach discrimination can in the context of initiation practices be said to occur where:

28.1 New learners at a school or students at a university are perceived as somehow inferior to the more senior learner or students and are therefore deserving of degrading and humiliating treatment. In *Prinsloo v Van der Linder & Another*¹³ the Constitutional Court defined discrimination as

"treating persons differently in a way which impairs their fundamental dignity as human being who are inherently equal in dignity."

28.2 An individual is discriminated against not by his exclusion but by his inclusion in an initiation practice. In terms of which such a practice is alienating, such an instance would be where for example, the student is from a community that has been historically denied access to higher education and therefore would have no frame of reference for such traditions. Another instance would be where the coercion to perform certain rituals such as going to parties where alcohol abuse is rife offends a particular religious belief. In such an instance the student is discriminated against because his or her religious conviction is not being respected and no attempt is made to accommodate such a belief within the dominant value system.

¹² Chaskalson *et al* Constitutional Law of South Africa, Equality, Juta at pg 14-21

¹³ 1997 (6) BCLR 759(CC)

SECTION 31 CULTURAL, RELIGIOUS AND LINGUISTIC COMMUNITIES

29. In terms of which:

- "(1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community-***
- (a) to enjoy their culture, practice their religion and use their language; and***
 - (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.***
- (2) The rights in subsection (1) may not be exercised in a manner inconsistent with any provision of the Bill of Rights."***

30. The practice of initiation arises at many institutions out of longstanding and ongoing traditions that serve to initiate a learner into a particular ethos or culture. The administration; its alumni, and its students which subscribe to such traditions therefore speak of the institutions "identity", or its "common spirit or ethos", which if outlawed will lead to covert activities. The extent to which a ban on initiations amount to a violation of the rights of a particular group needs therefore to be examined.

31. In *Christian Education v Minister of Education*, the court held¹⁴:

" There are a number of other provisions designed to protect the rights of members of communities. They underline the constitutional value of acknowledging diversity and pluralism in our society and give a particular texture to the broadly phrased right to freedom of association contained in Section 18. Taken together, they affirm the right of people to be who they are without being forced to subordinate themselves to the cultural and religious norms of others, and highlight communities being able to enjoy what has been called the "right to be different". In each case, space has been found for members of communities to depart from a general norm. These provisions collectively and separately acknowledge the rich tapestry constituted by civil society, indicating in particular that language, culture and religion constitute a strong weave in the overall pattern."

The Court then goes on to say that:

"It should be observed further, that special care has been taken in the text expressly to acknowledge the supremacy of the Constitution and the Bill of Rights. Section 31(2) ensures that the concept of rights of members of communities that associate on the basis of language, culture and religion, cannot be used to shield practices, which offend the Bill of Rights. These explicit qualifications may be seen as serving a double purpose. [A purpose of this qualification] is to prevent protected associational rights of members of communities from being used to

¹⁴ *Christian Education SA v Minister of Education* 2000 (10) BCLR 1051 (CC)13 at para 24 & 26

'privatise' constitutionally offensive group practices and thereby immunise them from external legislative regulation or judicial control...'

In terms of the above therefore, initiation practices which are justified, as being part of the tradition or culture of an institution would not be constitutional where so many other rights such as dignity, equality, freedom and security of person are likely to be infringed thereby.

32. As stated previously the rights discussed above are by no means an exhaustive list of the rights of individuals likely to be infringed as a result of initiation practices, but appear to be the rights most often effected during initiation practices. There may also be other rights such the freedom of association (Section 18), which is violated where a student is denied access to non-students during initiation week. Which rights are effected will, therefore, depend on the circumstances of each particular incident. The right to education could be said to have been violated where initiation practices are so alienating or so destructive so as to limit a learner or student access to the education process itself.

LEGISLATIVE FRAMEWORK

33. The legislative framework for governance at schools and institutions for higher education are largely separate and will therefore be dealt with separately.

(i) Schools

34. The institutional governance at schools is governed by the **South African Schools Act 84 of 1996** (hereinafter the "Schools Act"). Some of the relevant sections therein include: Section 8 which requires that public schools must adopt a code of conduct for learners; Section 10 which is the general prohibition against corporal punishment;¹⁵ and Section 61, in terms of which:

*"The Minister may make regulations-
(c) on any matter necessary or expedient to prescribe in order to achieve the objects of this act."¹⁶*

35. In terms of Section 8 of the Act, the Minister has also published, "**Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct.**"¹⁷ These guidelines as set out in Section 11 of the guidelines detail the offences that may lead to suspension. Included therein is "conduct which endangers the safety and violates

¹⁵ Section 10 (1) says "no person", which arguably could include punishment meted out by **prefects** and senior learners thereby making them guilty of an offence in terms of Section 10(2).

¹⁶ The preamble of the Act makes as an objective of the Act, the development of a system of national education, which seeks to uphold the rights of "learners, parents and educators" and advance the democratic transformation of society within recognised values and principles such as non-discrimination, diversity and tolerance.

¹⁷ General Notice 776 of 1998, Government Gazette number 18900 of 15 May 1998.

the rights of others;" The guidelines also provide for the discipline of learners in terms of the principles of due process.¹⁸

36. In terms of the Schools Act, conduct that violates the rights of learners by other learners ought to be prohibited and disciplined. While the guidelines referred to above can encompass acts of initiation in terms of the definition of the kinds of offences that are punishable, the guidelines are not peremptory. Furthermore, as will be dealt with below, some of the schools show an unwillingness to clearly define initiation practices that cause harm to other learners as an offence. In terms of Section 61 of the Schools Act therefore, the Minister may make regulations defining certain or all initiation practices as an offence and set out a procedure for the discipline of learners and teachers guilty of such an offence.

(ii) Higher Education

37. The legislative and policy framework for higher education consists of the **Higher Education 101 Act of 1997** (hereinafter "Higher Education Act"), which establishes the "legal basis of a single, national higher education system on the basis of the rights and freedoms of our Constitution."¹⁹ The Higher Education Act replaces the Universities Act 61 of 1995, and the Technikon Act no 125 of 1993. However, the Act leaves in place the plethora of private university acts that allow individual institutions to remain relatively autonomous. Institutions thus maintain a degree of self-regulation in respect of "student admissions; curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources."²⁰ Therein, therefore, lies the dilemma in respect of those institutions who as regulators of their own rules of conduct for staff and students, actively condone or offer a deaf ear to initiation practices that violate the rights of students.

38. The White Paper on Higher Education which was drafted prior to the promulgation of the Higher Education Act, outlines a comprehensive set of initiatives for higher education through the development of a single co-ordinated system with new planning, governing and funding arrangements, the following of which is relevant:

38.1 The White paper proposes the development of a National Education Plan that establishes amongst other matters institutional programmes that advance the vision, principles and policy goals of the education system. This plan provides the framework for three- year rolling institutional plans to be developed within the framework of the national plan. In terms of which such institutional plans will be expected to, amongst other matters, include the programmes of the institution.

¹⁸ See section 13

¹⁹ See: Higher Education White Paper <http://education.pwv.gov.za/Legislation/White-Papers/> at pg 38

²⁰ *ibid* at pg at 8.

38.2 The white paper also provides for the development of Broad Transformation Forums (BTFs) made up of all institutional stakeholders such as students, unions and management structures to determine collectively amongst other matters the strategies for transformations, to prepare codes of conduct; implement dispute resolution procedures and draft new legislation.

39. The Higher Education Act in Section 31 makes provision for the establishment of the forums referred to on (38.2) above.

40. Exactly how the government is to implement the functioning of the national and institutional plans may have to be investigated further. However, it appears from the reading of the White Paper together with the Higher Education Act that institutions could be required to develop programmes aimed at transforming existing traditional practices at higher education institutions, including programmes aimed at the prevention of initiation practices which infringe on student rights.

41. The Higher Education Act in terms of Section 3 makes provision further for the Minister to determine policy on higher education after consulting the Committee on Higher Education (CHE). In terms of which

"(2) The Minister must-

(a) publish such policy by notice in the Gazette; and

(b) table such policy in Parliament."

Thus the Minister may draft policy guidelines directed at higher education institutions, which seek to eradicate initiation practices at these institutions.

GENERAL OBSERVATIONS

(i) A Distinction Between Orientation & Initiation

42. An induction process, particularly at the residences, that seeks to introduce new students and learners to their academic environment is necessary and inevitable before the beginning of the academic year. There is however a distinction between induction which amounts to orientation and induction which amounts to initiation. This distinction is discussed hereunder. Most of the institutions from which complaints have been received, or where initiation practices are part of the tradition of the institution seemed to be grappling with this distinction between initiation and orientation following the recent negative publicity directed towards these practices.

43. In these institutions while extreme examples of physical abuse during initiation practices are generally condemned, most of these institutions, particularly amongst the university management structures, argued that initiation practices were part of the

institutional culture of induction and to forbid or totally abolish it would drive such practices underground. Indeed, one proponent of the practice of initiation suggested that it assisted in learning life skills, in that it helped prepare students for "after university life" since initiation sort to promote socialising with people and assisted individuals in learning to cope with difficult work situations. According to this extremist proponent of initiation, the relationship between first year students and senior students is the same as that between an employer and employee, one is senior to the other, and therefore the other has to follow instructions.

44. Whilst members of the administration including students involved in the administration of these institutions argued in support of the maintenance of initiation practices, as part of the tradition and culture of the university, such views were not articulated by students groupings and some staff members who spoke to the SAHRC outside of the meetings with the administration. These student groupings and staff members favoured the abolishment of initiation practices. The opinion was expressed that initiation practices cannot be viewed as a tradition worth retaining. They described these processes as human rights abuses and in conflict with a democratic culture, and as having more negative aspects to them than positive. These students were of the view that the tragic and violent incidents listed above were as a result of the tradition of initiation and were not isolated and extraordinary incident. The students warned that unless initiation is abolished, incidents such as those described above would continue. Similar sentiments were echoed in correspondence received by the Minister from ex-students of some of the institutions from which complaints had been received.
45. From the incidents summarised above, and from the interviews conducted by the SAHRC, the practice of initiation manifests in many different ways. Despite its many manifestations, these practices as they exist are nevertheless all designed to humiliate and subordinate a student mentally and in many instances physically as well. Thus, a student may be influenced or coerced to consume huge amounts of alcohol, and then be stripped naked and painted before being forced to walk through the town back to the residence. At another university, a student may be required to wear a nametag describing him/her in a particular way. While less serious, the objective is still to humiliate the student.
46. These incidents of initiation all occur within an institutional culture of authoritarianism and bullying. Such a culture is premised on a belief that older learners and students are superior to their younger counterparts and that they are therefore justified in treating these younger counterparts as inferior until these younger counterparts have "paid their dues." While some practices resulting from this belief are more excessive than others, such as those, which, result in death or physical harm, the basic premise still seeks to treat some as inferior whatever the nature of the practice. Such a culture is both alienating and at best undermines the self-esteem of an individual going to an institution to acquire knowledge and skills.

In fact such a culture seeks to undermine rather than enhance the learning process.²¹ Furthermore a culture that is premised on notions of superiority is what the constitution drafters sought to eradicate with a Bill of Rights culture, which is based on principle of freedom, equality and dignity. Even in apparently circumscribed parameters exclusionary and humiliating initiating practices can be found to violate human rights. *A distinction should therefore be drawn between orientation, where dignity is enhanced as students are advised, guided and mentored and initiation, where dignity is diminished as students are bullied, embarrassed and alienated.*

47. Orientation at both schools and higher education institutions should therefore be focussed on self-discipline; self-motivation and self-respect together with, academic and sports achievement. Prof Wilmot James Chairperson on the *Working Group on Values in Education* defines the distinction as follows:

"The distinction hinges around whether or not a programme leads a student or pupil in a dignified manner through anticipation of what the school has to offer, or whether it humiliates individuals into an authoritarian system of discipline."²²

48. The SAHRC visited institutions where orientation programmes were designed to achieve the objectives described above. In two of those institutions, programmes exist with trained orientation assistants or peer facilitators. They are chosen from the ranks of senior students and are trained to introduce new students to the campus and its facilities. In one institution the training is intensive and covers a range of subjects, including diversity training, basic counselling skills and information. The focus is to be helpful and supportive. These programmes occur in conjunction with the more informal activities such as sports days and rag. Certain institutions have also introduced programmes specific to the needs of particular students thus taking into account the particular diverse nature of our society rather than prescribing that students conform to a particular institutional identity thereby alienating them from the institution.²³ That orientation programmes acknowledge such diversity is essential to institutional transformation, particularly where historically an institution has served the needs of mainly of one particular race in South Africa.²⁴

²¹ In one of the incidents summarised above the parent complained that her daughter was unable to study because of activities surrounding initiation.

²² Letter to Minister dated 16 February 2000.

²³ One such example is that of the International Academic Programme Office (IAPO) at one institutions which co-ordinates the orientation of international students. The approach is for international students to participate in faculty and residence programmes. The IAPO provides additional activities, e.g. pre-registration sessions to address questions on study permits or giving information about the city etc.

²⁴ One of the institutions currently has 20 000 students, 6 000 of which live at residences. Of the 20 000 students 33% are black students of which only 20% of these black students live in residences. Furthermore of the 33% black students only 7% were African, the majority being coloured. The institution admits that residences currently only have white house fathers. Within this context initiation at residence would be highly alienating for these black students to whom such traditions are alien. The students in such a context would therefore be un-integrated from student life on campus.

(ii) A Value Based Approach to the Development of an Institutional Culture

49. The development of a culture of human rights and the infusion of the values that underpin the Constitution such as equality and dignity appear to be lacking from the institutional culture of many those institutions that are the subject of the SAHRC investigation.
50. While many of these institutions acknowledge the importance of human rights education and have embarked on human rights education, these programmes are often ad-hoc and remain un-integrated within the institutional culture.
51. At many schools and universities human rights materials are widely dispersed and readily available. Some of the schools visited by the SAHRC mentioned leadership talks on a regular basis to teach social responsibility or, visits from Magistrates talking about human rights. One of the universities visited spoke of the implementation of programmes to provide for more intensive guidance to students by each faculty in becoming more human rights orientated. The program aims at, through tools such as videos and psychometric assessments, to teach students life skills and human rights.
52. What institutions fail to perceive is that what is required is a paradigm shift away from authoritarian traditions to a value based approach to institutional governance that is reflected in the institution's regulations which regulates the day-to-day functioning of the institution. Thus, this would not only entail embarking on different educational programmes but also revising existing rules and practices in line with the values of the Constitution.

(iii) Factors Influencing the Maintenance of the Tradition of Initiation

53. The **role of the alumni** in the maintenance of the traditions of an institution contributes greatly to the continuation of initiation practices. This is particularly the case in the residences where generation to generation are almost guaranteed a place at the residence because of the family affiliation with a particular residence. Alumni members have a strong affiliation with the particular institution and its traditions, which they perceive as rites of passage for themselves and their children. The oldest residences, with strong initiation traditions are in many instances sponsored by some of the more prominent members within a particular sector of society. Students belonging to such families often experience strong parental pressure in either, firstly, experiencing initiation as a rites of passage and then, later, themselves initiating new students as part of the age old traditions of their families and their university. In fact in one of the schools referred to above, one of the perpetrators was the brother of the learner being initiated.

The composition of universities and schools have over the past few years changed drastically and now have to accommodate a variety of learners and students from

different backgrounds. It should also be remembered when these alumni attended academic institutions South Africa was not a constitutional state which aspires to achieve human dignity, equality and freedom at all levels.

54. Like parental pressure, **peer pressure** also plays a role in the practice of initiation. According to interviews peer pressure is particularly rife in residences. In many residences students feel pressurised to act and participate in activities in order not to feel "out". Peer pressure is also an influencing factor in students coming forward after being initiated as they fear victimisation. In one of the schools referred to above where many learner privileges and access to facilities were taken away from new learners as part of their initiation into the school, the initiation ritual was also pre-fixed by the sentiment: "Your good behaviour will determine when you will be allowed these privileges." Conformity in many instances in these circumstances becomes a survival mechanism to avoid ongoing alienation and in certain instances such as this one, being once again allowed access to basic facilities such as the school toilet.

The institutions do not take into account the effect of peer pressure and the subtle manner in students who do not participate are ostracised.

55. Another factor influencing initiation practices is alcohol abuse. Most universities referred to alcohol abuse as the biggest contributing factor to those incidents, which has resulted in physical harm. In fact, those universities which claim to have effectively ended initiation practices at their institution claim that this is as a result of extensive control of alcohol consumption on campus. Any effective ban on initiation, need also therefore take into account the influence of alcohol on initiation practices, and should address the influence of alcohol abuse in this context.

(iv) Impact of Initiation on Learners and Students

56. There appears from certain of the incidents referred to above to be little or no regard on the part of institutions for the effect that an act of initiation may have on learners and students at either a physical or emotional level. At its most extreme, initiation can result in death, but in some instances where as in the incident on the bus during a rugby tour, the learner was not seriously injured, the incident was viewed as not serious or deserving of an investigation. In another incident where learners kicked hares as part of a "spirit building session", parents claimed that the children were having nightmares as a result of being involved in the incident. Where students were called to meetings by seniors during the middle of the night, the parent claimed that her daughter and her friends were unable to study or complete work assignments.
57. Initiations also fail to take into account strongly held convictions and beliefs. Where students are coerced into going to functions where large amounts of alcohol are being consumed, the fact that students may have firmly held religious beliefs against such practices would generally be ignored, or would result in the alienation of the student from the dominant campus culture.

(v) *Institutional Commitment to Addressing Initiation Practices*

58. In many of the incidents referred to above, it appears that the initiation practices were actively encouraged by the administration of the school, or otherwise allowed to continue. In one incident, the letter listing the prohibitions placed on new learners at the school was typed by the school secretary. Furthermore, the principal of the school announced that the initiation would continue in defiance of a newspaper article stating that the list of prohibitive practices would not be enforced. The justification by certain universities of the continuance of initiation practices on the basis that to do otherwise would result in it going underground could also be interpreted as evidencing a lack of commitment to seriously addressing initiation practices.
59. A lack of commitment to addressing initiation practices is also evidenced by the often arbitrary and disproportionate attempt at disciplining perpetrators. At some of the schools this has included a refusal to impose discipline or merely deducting a few merit points. Ex-students, at one university, in correspondence to the Minister complained of the university's ongoing lack of commitment to effectively address initiation and claimed further that where students attempt to address initiation practices themselves, they face the risk of intimidation by other students,²⁵ or have their efforts thwarted by the administration of the university. These ex-students therefore demanded that the Minister institute an independent inquiry into initiation practices at the university.
60. The current legislative framework for both schools and higher education institutions therefore remains inadequate in an environment where the heads of those institutions either actively endorse or remain uncommitted to the effective eradication of initiation practices. During the SAHRC visits, allegations arose at one of the institutions, that allegations of sexual harassment were reported to the university leadership and that this was ignored and not investigated. Such gender problems it was stated were experienced especially during the period of induction. Any attempt to address initiation practices need therefore be wide enough to address all forms of harassment including sexual harassment.
61. What is required of institutions therefore is that the education sector should be able to define conduct that is unacceptable, and have effective investigative and disciplinary procedures to deal with unlawful conduct.²⁶ In addition such institutions should also have mechanisms for dealing with reprisals and retaliatory conduct when incidents are reported. A survey of American and English educational institutions reveal that many of these institutions do in fact have strong harassment, "hazing" and bullying policies²⁷. It is submitted that perhaps a wide-ranging limiting authoritarianism

²⁵ One letter received by the Minister in March 2001 described an incident of intimidation of students, which entailed abducting; assaulting and feathering two students who wrote an article detailing initiations.

²⁷ See various definitions in this regard.
Harassment & Bullying:

would be more encompassing than an initiation policy. This is because incidents of harassment, such as that of the learners who were assaulted on the bus; or cases of sexual harassment, do not necessarily constitute initiation practices, but are indicative of wider problems of abuse and harassment.

62. Consideration need also be given to the involvement of independent bodies in investigating incidents at critical times and moments if an institution is really committed to effectively addressing initiation practices.²⁸ An institution that is able to define conduct which is unlawful, and have effective and investigative and disciplinary procedures exhibits a greater degree of commitment to addressing initiation practices than one that justifies its continuance on the basis that to do otherwise would prevent it from going underground.
63. The issue of waiver of rights by consent to initiation has arisen repeatedly in the SAHRC investigation, it has been stated that no student is forced and that participation in the initiation is voluntary. The issue of waiver of rights was very recently dealt with in the case of **Khalfan Khamis Mohamed, Abdurahman Dalvie and President of the Republic of South Africa and Six Other**²⁹, in which the Constitutional Court stated:

"We will, without deciding, assume in favour of the respondents, that proper consent of such a nature would be enforceable against Mohamed. To be enforceable however, it would have to be fully informed consent and one clearly showing that the applicant was aware of the exact nature and extent of the rights being waived and the consequence of such consent."

"Harassment or bullying can take forms, often involving the abuse of power or position. These terms refer to behaviour which is hostile and, or offensive to the recipient or others, and which unreasonably interferes with an individual's work, academic performance or social life. Such behaviour can create an intimidating environment, which undermines the integrity or dignity of the individual. It is unwelcome and can make an individual feel uncomfortable, unsafe, frightened or embarrassed. Such behaviour may be physical, verbal or non-verbal, but the common link is that the behaviour is unwanted by the recipient or others, is unwarranted by the relationship and would be regarded as harassment or bullying by any reasonable person." <http://info.lut.ac.uk/admin/personnel/recruitmet/harass>.

Some institutions in terms of their student codes of conduct may have a list of prohibited conduct, one in particular which deals with initiations or "hazing", the term used in the United States is the following:
Hazing/Initiations

"Hazing is defined as an act which endangers the mental or physical health or safety of a person, or which destroys or public or private property, for the purpose of initiation, admission into affiliation with or as a condition for continued membership of a group, intramural/intercollegiate sport or organization."

<http://www.cuw.edu/judicial-affairs/student-conduct-code>

Retaliation

"Retaliatory conduct against any individual who has filed a complaint of harassment, who has reported witnessing the harassment, who has participated in the harassment complaint process, or who has not been the subject of a complaint of harassment and found not to have engaged in harassment is also a violation of this policy and is grounds for discipline and/or remedial action."

<http://www.rci.rugters.edu/~msgriff/webdoc5.htm>

²⁸ At one university, the Orientation Monitoring and Investigation Committee was criticised by students for its lack of independent representation. Management also admitted to loopholes in the committee on the basis that the rules were not explicit enough in defining prohibitory conduct.

²⁹ See www.wits.law.ac.za at par 63

64. Clearly in an environment as coercive and pressured as that of initiations, the nature and extent of the rights of an individual will not be explained. Nor would that individual be full aware of the consequences of waiver, for that waiver to be valid. This is particularly the case where the individual is still a child at school.

(vii) Liability of Institutions in respect of Initiation Practices at those Institutions

65. One of the institutions visited by the SAHRC commented that it cannot be held liable for transgressions by individuals and stated that only the individuals concerned should be held liable. This therefore raised the question of whether or not an institution has a duty to prevent harm inconsistent with the Constitution to learners and students.³⁰

66. *“The period of time that the learner is involved in school activities, the teacher acts in loco parentis. This implies that the parent retain the basic authority in the training of the child, but that this authority is transferred or delegated by law to the period that that child is at school. The educator takes the place of the parent with regard to the responsibility of supervision... Persons who are in loco parentis, such as teachers and house masters at boarding schools, have certain responsibilities towards those they are in charge of was confirmed in Hiltonian Society v Crofton 1952 (3) SA 130 (A). This not only puts a burden of supervision on educators, but also put educators in a similar position as policeman with regard to positive legal responsibilities, owing to the special nature of their work”.*³¹

67. The obligation to develop the common law in line with the Constitution was dealt with in the very recent case of Carmichele V Minister of Safety and Another³². In terms of which the court held that:

³⁰ See S39 of the Constitution in terms of which:

"(1) When interpreting the Bill of Rights, a court, tribunal or forum-

..

(c) may consider foreign law

(2) When interpreting any legislation, and when developing the common law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

In the United States Case of Davis, as next friend of LaSHONDA D. v. MONROE COUNTY BOARD OF EDUCATION et al. <http://supct.law.cornell.edu/supct/html/97-843.ZS.html>, the Supreme Court found that the persistent sexual advances by one learner against another learner, amounted to discrimination in terms of Title IX of the Education Amendments of 1972. Accordingly a private Title IX damages action was said to be possible against a "school board in cases of student-on-student harassment, but only where the funding recipient has actual knowledge, and that harassment is so severe, pervasive, and objectively offensive that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school."

³¹ It is a keynote address delivered by Adv. E Boshoff (Legislation and Legal Services from the Department of Education) on 5 September 2000.

³² See www.wits.law.ac.za at pg 21

" In some circumstances there would be a positive component which obliges the state and its organs to provide protection to everyone through laws and structures designed to afford such protection."

The court thus finding that in certain circumstances, the court is entitled to rely on the common law duty to act where a constitutional right has been violated. Whether or not such a duty to act exists on the part of an individual institution will therefore depend on a number of factors including: The state's duty as may be determined from the Constitution and statutes to protect learners and students; the wording of the various institutional codes and regulations; and mechanisms put in place by institutions to prevent harm to learners.

68. Under these circumstances it would therefore be prudent for the Education sector as a whole and for individual institutions to take all reasonable steps to prevent harm to learners.
69. One of the greatest difficulties in preventing initiations seems to be the fact that the most serious initiations practices often take place at night and in the residences. At one of the universities, where the residences are known to participate in serious initiation rituals, there has been a suggestion that the system of "contract" wardens at the university should be changed. One of the institutions that claim to have effectively eradicated initiations in the residences, attribute this to the fact that it has employed residential managers on a full time basis. The residences are monitored by such managers on a twenty-four basis. Clearly, therefore, and particularly within those residences that have a reputation for extreme initiation rituals, these residence should be monitored with greater vigilance, if an institution is serious about addressing initiations.

RECOMMENDATIONS

70. The practice of initiation seeks to undermine the intrinsic worth of human beings by treating some as inferior to others. Initiation practices undermine the values that underpin our Constitution. Initiation therefore impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern. Initiation practices should accordingly be abolished and prohibited at all educational institutions. On the other hand effective orientation processes should be encouraged to ensure that students from all backgrounds are quickly integrated into learning and social activities.

The impression is created that the practices and the monitoring thereof are just organised in a different way and that orientation is just initiation in another guise. What is not acknowledged is that initiations cannot be transformed and the system, which entertains initiations practices, has to be abolished in all its forms and guises. Even the most innocent practices are not organised on a voluntary and inclusive basis but is often well-organised and structured and open to abuse.

71. As stated above, initiation practices violate a wide-ranging number of rights depending on the nature of the practice. Furthermore the State has a positive obligation to develop a framework to prevent the violation of human rights through practices such as initiations. Such a commitment may be addressed in terms of schools through Section 61 of the Schools Act by developing regulations that seek to eradicate initiation and other practices. Private schools it is submitted should be included in this regulatory framework.
72. The State may also meet its obligations at higher education institutions by the development of policy in terms of Section 3 of the Higher Education Act aimed at eradicating initiation and other practices. In addition the State may in terms of the National Education Plan provide a framework for institutional plans to be developed that seek to transform the culture of an institution.
73. Whatever regulatory mechanism is utilised, such mechanism should be able to define conduct that is unlawful, and have effective and investigative, disciplinary, and monitoring procedures to deal with unlawful conduct.
74. Orientation programmes should be purposeful and should be able to introduce the learner or student to the institution in a "dignified manner through anticipation of what the school has to offer."³³ The examples of good practice illustrated above may serve as a guide of the kinds of orientation programmes that can be developed. Orientation programmes, particularly at social events such as sports days and cultural events should seek to limit the use of alcohol.
75. Transformation at educational institutions should not just be about increasing representivity but should also include a co-ordinated approach that seeks to transform the values of the institution in line with the values of the Constitution. This can be achieved through the revision of existing rules and practices and the development of rights-based programmes at schools and universities that are realistic and practical in terms of the day-to day functioning of the institution. The International Academic Programme Office (IAPO)³⁴, referred to above is an example of how practically, institutional programmes seek to address xenophobia at one university. Given the powerful role played by the alumni at many institutions, mechanisms should also be sought to include alumni and make them stakeholders in institutional transformation.

³³ See (47) above.

³⁴ See footnote 22

PART B

CULTURAL INITIATIONS AND HUMAN RIGHTS

INTRODUCTION

76. In Part A of this report, the SAHRC reported on initiation practices at educational institutions – which is the outcome of a request, made by the Minister of Education, in terms of the South African Human Rights Commission Act Number 54 of 1994. At about the time of that request, there were wide spread media reports and some complaints directed to the SAHRC about another phenomena i.e. the cultural practice of initiations in traditional societies in South Africa.
77. The SAHRC has noted with grave concern media reports about deaths in initiation schools around the country, more particularly the Northern Province and the Eastern Cape. The SAHRC established that a number of rights are being violated: sections 10 (human dignity), 11 (life), 12 (freedom and security of the person), 21 (freedom of movement and residence), 27 (health care, food, water and social security), 28 (children), 29 (education), 30 (language and culture), 31 (cultural, religion and linguistic communities) to mention a few. It is against this background that the SAHRC decided to give attention and make recommendations regarding this practice as well. It must be mentioned from the onset that time constraints balanced against the urgency of the matter denied the SAHRC an opportunity of a full-length investigation at this point. This part of the report is therefore only of a preliminary nature.
78. The Northern Province provincial government organised an Indaba to discuss circumcision. A delegation from the SAHRC was sent to participate. The Indaba was postponed due to a misunderstanding between the organisers and the chiefs who view themselves as the custodians of this culture and objected because they were not properly consulted.
79. It appears that most of the initiates are teenagers. At a very young age they go through a traumatic procedure, with the possibility of permanent amputation or disfigurement.
80. During this inquiry the SAHRC interviewed persons³⁵, studied media reports and pitted the outcomes of such, against the Constitutional principles and the relevant rights. The challenge is to establish how could these communities organise initiation schools within the ambit of the Constitution.

³⁵ The people interviewed are often reluctant to be quoted and prefer to remain anonymous.

HUMAN RIGHTS

81. CONSENT

This paragraph must be read together with paragraphs 63 and 64 of Part A.

Some argue that traditionally at a certain age, a boy has to go to the initiation school with the consent or arrangement of his parents. Others have even argued that no child ever consents to being taken to formal school at the age of six; it is the responsibility of the parent to take that child to school whether the child likes it or not because, it is in his or her best interest.

Cultures of various people differ on this aspect; some say boys should attend the initiation at the age of 18. In their opinion that is the ripe age because the boy has matured and has done everything that has to be done by a boy and when he is a man he is not expected to do those things regarded as 'boyish' and will now take responsibility; while others argue that what's the point of circumcising a boy who lost his virginity (dirty person according to them). A person has to be circumcised whilst a virgin, the belief being that he is still clean. The probability is that by the age of eighteen he would have lost virginity.

It is noted that this practice has always been in the context of communal responsibility. The SAHRC understands that this culture is normally community driven. The business aspect, which has recently emerged, is foreign to this practice.³⁶

82. SECTION 10: HUMAN DIGNITY

This paragraph must be read together with paragraph 19 of Part A.

The Constitution requires that every person should be treated with dignity and should be respected and protected. This requires a practice that recognises that human dignity is inherent irrespective of whether a person has attended the initiation school or not. Everyone should be treated accordingly. The question that comes to mind is who has the responsibility to protect dignity as mentioned in the Constitution. The answer is that the state and all its organs have a direct responsibility. It can also be stated that those who seek to practise a particular culture or see it as their responsibility to promote that culture have a corresponding duty to protect the dignity of everybody including the initiates.

83. SECTION 9: LIFE

The number of deaths across the country as a result of botched circumcisions is a matter of concern. It is a notorious fact that most of the deaths are not natural. The

³⁶ See infra para 89

SAHRC is not in any way suggesting that there can never be natural deaths while in initiation school. The question is, who is to be held responsible or liable for the unnatural death of an initiate. Can that person or persons be charged with murder or other related crimes? The law must take its course. Where the process was both family driven and community driven, proper procedures must be followed to ensure that safety precautions are being taken. It is the duty of a family and those acting *in loco parentis* to ensure that the children are in safe hands.³⁷

Where a boy flees home to join the initiation he should not be allowed to participate in the proceedings until a parent, guardian or responsible relative is notified and has approved his participation. The parent or guardian must have the option of taking the child home.

84. SECTION 12: FREEDOM AND SECURITY OF THE PERSON

This paragraph must be read together with paragraphs 23, 24 and 25 of Part A.

The information gathered from the media suggests that ill treatment is the order of the day in these initiation schools. It is alleged that initiates are subjected to torture, and are treated in an inhuman and degrading manner. It is also alleged that some have even been starved. The SAHRC, however, has no evidence to that effect other than media reports. If these reports are correct, the practices clearly conflict with the Constitution. Where there is such an occurrence culprits must be brought to book. The Constitution does not tolerate the practice of any culture that violates the constitutional rights of others.

85. SECTION 28: CHILDREN RIGHTS

This paragraph must be read together with paragraph 26 of Part A.

When a culture is practiced, it has to be exercised within the ambit of this section of the Constitution.

86. SECTION 29: EDUCATION

It has been established that the timing of initiations usually clash with school terms. That, on its own is a violation of this important right. It is argued, by some that the right to education includes attending initiation school and if it does not, it is discriminatory and unconstitutional because it would fail the provisions of Section 30 (language and culture) of the Constitution.

³⁷ See supra para 66 for a discussion of the principle in *in loco parentis*

The SAHRC submits that usually the period spent at initiation school is not long, so a common understanding can be reached between the two systems. In some parts of the country the period of the initiation school is usually during school holidays. If it is longer, an arrangement can be reached with the relevant Department of Education.

87. FEMALE INITIATION

Female initiation or female genital mutilation/circumcision, as it has come to be known has been a focus of a number of groups internationally and in our society. Broadly, this impacts on³⁸:

Women's rights – female genital mutilation is an extreme example of a general subjugation of woman.

Children's rights – an adult is free to submit herself to a ritual or tradition, but a child having no formed judgement, does not consent but simply undergoes the operation.

The right to good health – female circumcision produces serious health problems.

In August 1982 WHO made a formal statement of its position to the United Nations Commission on Human Rights. This statement endorsed that government should adopt clear national policies to abolish the practice, and to inform and educate the public about its harmfulness.³⁹

The Committee on the elimination of discrimination against women CEDAW has made similar recommendations.⁴⁰

88. PEER PRESSURE

This paragraph must be read together with paragraph 54 of Part A.

Peer pressure complicates matters in both female and male initiations. Often initiates attend initiation schools without the permission of parents. This happens because of peer pressure. The fear of being ostracised is so immense they are prepared to take the risk of venturing into the unknown. In some cultures, although in an informal way there is counselling in preparation for initiation. A would be initiate would be told the importance of being initiated, knowing who you are, following instructions, the hardships he/she may come across during the initiations, the importance of endurance and patience. Without this parental support and guidance, initiation school can be a hazardous exercise exploited by ruthless outsiders.

³⁸ Henry J Steiner and Philip Alston International Human Rights in Context Clarendon Press Pg 244 and 245

³⁹ Ibid Pg 244

⁴⁰ Ibid Pg 249

89. MUSHROOMING OF INITIATIONS SCHOOLS

There is a danger that this practice is open to abuse because of the mushrooming of initiation schools and the moneys families have to pay for their children to attend them. With unemployment and retrenchment rife in our country, people see this culture as an opportunity of making money.

In the absence of a detailed legal framework a danger exists that these individuals operating initiation schools are accountable to nobody.

90. THE POSITIVE ROLE OF INITIATION SCHOOLS

It is important to note that initiation and culture can play an important and/or positive role in one's life.

The existence of a community depends on the ways in which it schools its members, e.g. a boy in a particular community grows up learning his role and responsibilities both to his family and community. At an initiation school it said, this is regarded as a passage wherein ones role, duties and responsibilities are learnt. The importance of self-respect, self-consciousness and respect towards other people, the skills of dispute resolution, relating to other people, as well as the respect of women are taught.

91. RECOMMENDATIONS

The SAHRC recommends that the Department of Education convene an Indaba in which all the relevant stakeholders participate to develop a legal framework which the organisers of initiation schools have to comply with.

The SAHRC will continue to be seized with this matter and enhance this preliminary report.