

NOTICE 687 OF 2005

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION**TERMS OF REFERENCE****PUBLIC INQUIRY INTO EQUALITY AND VOLUNTARY ASSOCIATIONS:**

This public inquiry is the South African Human Rights Commission's (SAHRC) response to complaints pertaining to alleged violation/s of the right to equality of those who find themselves excluded from joining voluntary associations based on an alleged arbitrary or non objective criteria.

A)

Background:

1. **hi terms of Section 184 (1) of the Constitution of the Republic of South Africa, the SAHRC has a mandate to--**

"(a) promote respect for human rights and a culture of human rights;

(b) promote the protection, development and attainment of human rights; and

(c) monitor and assess the observance of human rights in the Republic of South Africa."

2. **The SAHRC has the power, in terms of Section 184(2) of the Constitution read with Section 9 of the Human Rights Commission Act No.54 of 1994:**

"(a) to investigate and to report on the observance of human rights;

(b) to take steps to secure appropriate redress where human rights have been violated;

(c) ...

(d) ...

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

Section 9 The right to Equality;

Section 10 The right to human **dignity**;

Section 18 Freedom of association;

Section 30 The right to **use** language **and** culture of choice; **and**

Section 31 The rights of **cultural**, religious and **linguistic communities**

B)

Definition.?:

“Act” refers to Human Rights **Commission Act No. 54 of 1994**.

“Constitution” refers to the Constitution of the Republic of South Africa, **Act 108 of 1996**.

“Chairperson” refers to the Chairperson of the Human Rights Commission or any other person designated by him.

“Commission” refers to the Human Rights Commission as **established by section 181 of the Constitution**.

C)

Terms of Reference:-

1 The Terms of Reference for the Inquiry are set out in the Government Gazette as required by the Human Rights Commission Act, 54 of 1994:

1.1 to investigate alleged discriminatory practices whereby people are excluded from joining voluntary associations with others in violation of their protected fundamental rights.

1.2 the Human Rights Commission will consider submissions and hold public hearings to determine:

1.2.1 the constitutionality of voluntary associations;

1.2.2 whether such associations violate, among other rights, the right to equality and human dignity of those excluded from such associations; and

1.2.3 what appropriate relief would be available for the victims of such discriminatory practices.

D)

Rules and Procedures:

1. The investigation and inquiry will be conducted in terms of the rules of procedure promulgated in terms of Section 9(6) of the Human Rights Commission Act No. 54 of 1994 published in Government Gazette Number 17457 of October 1996.

2. The Commission will call for submissions from the public and interested parties including institutions, organisations and individuals on any matters referred to in the terms of reference of this investigation and inquiry.
3. The said submissions shall be lodged with or posted to the offices of the Commission at any of the addresses mentioned below.

If needed, the Legal Department of the Commission will assist persons in formulating the said submissions. The submissions shall be in writing and must disclose the name, address and other contact details of the deponent. Anonymous submissions will not be entertained.

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

4. The closing date for the submissions is 10 June 2005. However, the Head of the Legal Department may at his discretion also consider late submissions.
5. The Commission may furnish any person who has been referred to or likely to be referred to in those submissions, with a copy thereof. Such copy may be accompanied by a written notice requiring such person to:-

5.1 submit a written response to the allegations/submission to the Legal Department of the Commission within 14 days of the delivery of such written notice; and

- 5.2 appear before a panel of the Commission at a **public hearing to be held** on a date and place to be announced in the **Government Gazette**, in order to respond to the allegations against him or her.
6. **The Commission** may invite to the hearing specific individual organisations, institutions and any other interested parties to **make documentary** and/or oral **submissions** and testimony at the **public hearing**. Such testimony shall be given under oath or affirmation.
7. Pursuant to the provisions of the **Act**, a panel will **preside** over the Public Hearing and the Chairperson of the Commission or a person designated by him/her.
8. The panel may subpoena any person in possession of any information or documents relevant to the hearing **to** appear before the **panel** and give testimony.
9. The person referred to in 5, above, shall **be entitled to** be represented by his/her legal representative and shall give **his/her** testimony **under oath or** affirmation.
10. **At the conclusion of the hearing** the panel will make findings and recommendations.
11. **Such findings and** recommendation will be made public.

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