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consolidated summary of oral and written inputs on the customary initiation bill

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| Chapter 1: Interpretation, application, objectives and principles | | | |
| Definitions | | | |
| *Clause 1.* | | | * **Abduction.** The definition of ‘abduction’ does not address the fact that people over the age of eighteen can also be subject to abduction. The definition of abduction is also similar to ‘kidnapping’ as defined in this clause. Remove definition of ‘abduction’ as the common law and statutory offences of *abduction* relate to specific instances regarding the removal of a child *for purposes of sexual intercourse* or marriage*.* The unlawful removal of a person against his or her will constitutes the offence of *kidnapping –* a definition contained in Clause 1 and will be sufficient for the purposes of the Bill. * **Circumcision’**, in the South African context, refers to male initiates only, and therefore the definition does not apply in respect of female initiates. * **Curriculum.** The Bill should not define ‘curriculum’ as the traditional and cultural customs and rituals performed and taught at an initiation school are too sacred and secret for public consumption. * **Principal.** Specify the requirements for a principal as follows: This must be any person with an initiation experience of at least three years, and should initiate one of his or her children or family member. The specification will eliminate the unscrupulous elements in the initiation process. |
| Applications, objectives, interpretation and prohibitions | | | |
| *Clause 2(4).* | | | * This clause should take into consideration the fact that some initiation traditions count the age of the person involved in the initiation process from the period in which his or her initiation took place. Therefore, replace the age requirement with the requirement for a minimum experience of ten years. * A registered medical practitioner, who is at least 25 years old, should be exempt from this provision. |
| Chapter 2: Oversight and Coordinating Structures Initiation practice is a family matter that should not involve any level of government. Chapter two of the Bill is therefore unnecessary. | | | |
| National Initiation Oversight Committee | | | |
| Regulations should address the question of NIOC membership, as the need to expand or minimise the Committee may change over time. Amending regulations takes a much shorter period than primary legislation. | | | |
| *Clause 4(1).* | | | * The Minister should undertake this provision in consultation with the National House of Traditional Leaders. The clause should also include Chairpersons and Secretaries of Provincial Houses. * Only those who have undergone initiation should qualify for NIOC membership. |
| *Clause 4(3).* | | | This clause is not sensitive to those cultures where the involvement of women in matters of male customary initiation is taboo. The scope of the women’s involvement needs clarification. |
| **Chairperson and deputy chairperson** | | | |
| *Clause 5(1).* | | | The Chairperson contemplated in this clause must be a traditional leader. |
| **Disqualifications** | | | |
| The National House of Traditional Leaders recommends that members of the NIOC should have undergone initiation; otherwise, they should not be eligible to be members of the committee. | | | |
| *Clause 6(b).* | | This clause appears to contradict *clause 2(4).* | |
| **Meetings and functions** | | | |
| *Clause 8.* | | | The Committee itself should determine the procedural matters pertaining to its meetings. |
| *Clause 8(2) (a).* | | | It should be possible for meetings of the NIOC to take place anywhere in the country, not just in Pretoria. |
| *Clause 9(2).* | | | The clause should provide for biannual reports, and regulations should address the procedural aspects. |
| *Clause 9(3).* | | | Regulations should capture the details referred to in this clause. |
| *Clause 10.* | | | Regulations should provide for the matters contained in this clause. |
| Provincial Initiation Coordination Committees | | | |
| **Establishment, composition and term of office** | | | |
| *Clause 11.* | | | * At least three members of the Khoi-San Council must be members of the PICC in the case of the Western Cape, which neither has recognised traditional leaders nor a Provincial House of Traditional Leaders. * The Bill must recognise and acknowledge that, despite the lack of formal recognition, traditional leaders in the Western Cape play a vital role in providing guidance and leadership in respect of cultural initiation in the province. * Regulations should provide for the exact number of representatives to form part of the Provincial Initiation Coordinating Committees. |
| **Chairperson and deputy chairperson** | | | |
| *Clause 12(1) (a).* | | | The Chairperson contemplated in this clause must be a traditional leader. |
| **Meetings** | | | |
| *Clause 14.* | * Regulations should deal with how the Provincial Initiation Coordinating Committees should meet. * The Committee itself should determine the procedural matters pertaining to its meetings. | | |
| **Functions** | | | |
| *Clause 15.* | District and Local Initiation Fora should assume the functions contemplated in this clause. | | |
| *Clause 15(1) (e).* | In making a determination on the number of initiation schools to operate within a particular municipal area, the PICC must take care not to interfere with the existing legally registered initiation schools, as this may encourage the spread of illegal initiation schools. | | |
| *Clause 15(1) (i) (iii).* | The principal of an initiation school should be under no obligation to provide any further details on the activities deemed sacred and secret. | | |
| *Clause 15(1) (m).* | This clause should entrust the responsibility to monitor and evaluate the general functioning of initiation schools, during the initiation period, only to those PICC members who have undergone initiation. | | |
| *Clause 15 (2)* | Regulations should deal with the provisions of this clause | | |
| *Clause 15(2) (k).* | * This clause should also consider information relating to details about initiates taken to hospitals. * To a novice, this clause can also convey the impression that the purpose of initiation is to kill initiates. Therefore, rephrase it to read as follows: ‘information relating to the nature and cause of any unfortunate loss of life of an initiate.’ | | |
| *Clause 15(7) (a).* | This clause should emphasize that the initiation school that receives initiates from a closed school must as far as possible conform to the culture of the transferred initiates. | | |
| *Clause 15(10) (a).* | This clause should make it clear that the PICC should report to the South African Police Service any criminal conduct revealed in the process of investigating any alleged abuse of initiates. | | |
| **Technical support teams** | | | |

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| *Clause 16.* | | | | | | | | * Regulations should address the composition of the technical support teams. * Local Houses of Traditional Leaders should form part of the Technical Support Teams contemplated in this clause. |
| *Clause 16(1) (b).* | | | | | | | | This clause should consider the inclusion of the Department of Water and Sanitation. |
| **Administrative and financial support** | | | | | | | | |
| *Clause 17.* | | | | | | | This clause should consider the establishment of a dedicated Initiation Support Unit in every Provincial House of Traditional Leaders. | |
| Chapter 3: Role-Players | | | | | | | | |
| The initiation role-players described in this Chapter do not include the District Initiations Forums, Local Initiation Forums, and Initiation Working Committees that already exist in some areas. | | | | | | | | |
| Government | | | | | | | | |
| *Clause 18(2) (a).* | | | | | The Bill should make it explicit that this clause will apply in instances where there is no recognised traditional leader, who is the custodian of land in that particular jurisdiction. | | | |
| *Clause 18(3) (a).* | | | | | * The PICC – not the Minster - should make a determination on the payment of initiation-related fees, in consultation with the relevant communities and structures. * The determination of exact fees should depend on provincial or cultural peculiarities, and not be a ‘one size fits all.’ * Government should also contribute to the funding of Customary Initiation in the same way it is contributing to Medical Male Circumcision. | | | |
| Traditional leaders | | | | | | | | |
| *Clause 20(3)(d)* | | | | | Where there are no formally recognised traditional leaders, as in the Western Cape, the Bill should accommodate traditional leaders whom their initiation-practicing communities recognise, or elders who have a demonstrable record of accomplishment in initiation related practices. Alternatively, appoint a credible organisation to perform the responsibilities stipulated in this section. | | | |
| Principals and care givers | | | | | | | | |
| In the absence of initiation school Principals, such as in the Western Cape, the Bill must give legal recognition and clearly defined responsibilities to Initiation Forums and related structures who perform the responsibility of managing initiation schools. | | | | | | | | |
| *Clause 21(11) (b).* | | | | | This clause needs further explanation, or else remove it from the Bill. | | | |
| Parents or legal guardians | | | | | | | | |
| *Clause 22(1) (b).* | | | | Delete the option of not ‘being circumcised at all.’ Circumcision is an obligatory, not optional, part of the male initiation process. | | | | |
| *Clause 22(4) (a).* | | | | The parents, legal or customary guardian contemplated in this clause should only be those that have undergone initiation. | | | | |
| Medical practitioners | | | | | | | | |
| *Clause 24(2) (b).* | | It is impractical for medical doctors to supervise experienced surgeons with a good record of accomplishment. The Department of Health should assist with the training of traditional surgeons. | | | | | | |
| *Clause 25(1) (a).* | | The provision regulated in this clause is a well-established procedure and is not necessary to specify in the Bill. It should suffice to provide that the SAPS investigate the complaint. | | | | | | |
| *Clause 25(2) (c).* | | The Bill should provide for a procedure after the school’s closure in terms of this clause, as the failure to do so could provide a practical concern, such as a need for medical treatment. | | | | | | |
| Chapter 4: Initiation Schools | | | | | | | | |
| Registration | | | | | | | | |
| *Clause 26(2).* | * This provision is impractical as registration can easily become heavily bureaucratic. Rather, the registration certificate should be due for renewal every five years. * In the case of AmaXhosa, there is no one controlled area for practicing initiation. Any secluded area can function as an initiation place, and therefore registering a ‘school’ in this context is impossible. | | | | | | | |
| Initiation seasons | | | | | | | | |
| *Clause 27(1).* | * Proper initiation requires at least two months. This clause is not doing justice to the custom if it confines it to the relevant provincial school holidays and official school terms. * Conduct initiation school in winter to facilitate the healing process. | | | | | | | |
| *Clause 27(4)* | * Amend this clause by adding, ‘or of working age.’ | | | | | | | |
| Consent, prohibitions, age and circumcision | | | | | | | | |
| Replace the word ‘circumcision’ with the word ‘initiation.’ | | | | | | | | |
| *Clause 28(1) (a).* | | | | | Outlawing of forced initiation, particularly in instances such as the kidnapping of boys, is welcome. However, this section also disempowers community men from continuing with the accepted practice of correcting unwanted behaviours by taking the boy(s) to initiation instead of formal correctional services. | | | |
| *Clause 28(1) (c).* | | | | | The initiate should obtain the consent of the parents or legal guardian before seeking to obtain the requisite medical certificate. | | | |
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| *Clause 28(2).* | | | | | * This clause should also accommodate cultures that practice initiation from the ages of eight, 12 and 14. This would also need an amendment to section 12(8) of the Children’s Act. Section 5 of this Act would also need amending to accommodate young girls below the age of 16 who willingly agree to virginity testing. * Change this clause to read: ‘No person of basic school going age should go to initiations.’ This will limit underage boys and reduce school time losses. | | | |
| *Clause 28(3)(a)* | | | | | The word ‘*child’* should replace the reference to a ‘*person.’* | | | |
| *Clause 28(6) (a)* | | | | | The clause must specify the envisaged religious or medical purposes. | | | |
| *Clause 28(6) (b).* | | | | | The reference to the *General Regulations Regarding Children* is superfluous, especially in view of the fact that the clause also refers to the Children’s Act (which includes the regulations in any event). | | | |
| *Clause 28(6) (d) (ii).* | | | | | * This clause should not apply to registered traditional surgeons who had an excellent record of performing male circumcision. * The clause is culturally insensitive, undermines traditional surgeons and defeats the whole purpose of the Bill as it brings Medical Male Circumcision through the back door. * This section disempowers *ingcibi* altogether. It is an insult to the traditional way of life. The consequence of this would be to distract medical practitioners from attending to the sick and emergencies. | | | |
| *Clause 28(10).* | | | | | The offence contemplated in this clause is superfluous in view of clause 33(2), which deals with offences. | | | |
| Discipline and teachings | | | | | | | | |
| *Clause 29.* | | | | | Regulations should address issues of discipline and teachings. | | | |
| *Clause 29(3) (a) & (b).* | | | | | * The National House recommends scrapping these sub-clauses as no one can prescribe what initiation schools can teach, considering that initiation teachings and practices are sacred and secret and not subject to open discussion. * This section is impractical and disempowers family responsibilities. Boy’s teachings are a responsibility of family, relatives and community at large. There is no school, no curriculum, no exams and no invigilators. | | | |
| Water, sanitation, food, health care and liquor | | | | | | | | |
| This section should also address the proliferation of drugs in initiation schools. | | | | | | | | |
| *Clause 30(4) (a).* | | | | | * This clause should not refer to the selling of beer to initiates in the initiation schools, as this does not happen in the first place. It may perhaps be enough to say that illegal activities are not permissible in initiation schools. * The reference to section 10(1) of the Liquor Act is an unnecessary repetition of a provision of other legislation. Should there be amendment of the provision in the Liquor Act, there is a risk that the provision contained in this clause will not receive commensurate attention since another department administers the legislation. This will create unnecessary confusion, which the Bill should rather avoid. This also applies in respect of the repetition of the Children’s Act provisions. | | | |
| *Clause 30(4) (b).* | | | | | This clause should also consider liquor supplied for cultural purposes, for example, *umqombothi,* which is an integral part of the festivities in some of the cultures that practice initiation. | | | |
| Death of initiate | | | | | | | | |
| *Clause 31(1).* | | | | | | This clause should also provide for the role of the caregiver, as not all initiation schools have principals. | | |
| Chapter 5: General Provisions | | | | | | | | |
| Offences | | | | | | | | |
| *Clause 33(1) (c).* | | | | | | Increase the duration of imprisonment to a maximum of 20yrs. Fifteen years is too lenient. | | |
| Appeals | | | | | | | | |
| *Clause 34(1).* | | | | | This clause should make it incumbent upon provincial officials to assist aggrieved persons with lodging appeals to the relevant Premier. | | | |
| Interim arrangements | | | | | | | | |
| *Clause 41(1).* | | | This clause must also apply to traditional nurses. | | | | | |
| *Clause 41(4) (a).* | | | Community structures directly involved in the initiation process should also be among those, which the Minister may consult with, in determining initiation registration fees, and fees rendered to a traditional surgeon for his service | | | | | |