



## **THE NATIONAL HOUSE OF TRADITIONAL LEADERS COMMENTS ON THE CUSTOMARY INITIATION BILL, (B7-2018)**

### **1. Introduction**

The National House of Traditional Leaders, Provincial Houses and Traditional Leadership as a whole appreciates the opportunity accorded to it by the COGTA Portfolio Committee of the National Assembly, to formally consults *ubukhosi* on this very important Bill. Chairperson, let us express our gratitude for the public hearings you have held in the provinces of Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Limpopo, Northern Cape and the North West last month. We understand that you are also planning to hold a public hearing on the CIB soon in the Western Cape. Although there are no formally recognised traditional leaders in this province, there are communities which practice initiation. I must say that unlike many Bills that have a bearing on traditional communities, this Bill is being widely consulted upon, and we really appreciate that. The NHTL would like to apologise for what has happened in Mpumalanga, where the Members of the Portfolio Committee were prevented from conducting a smooth public hearing. That caught us by surprise, we never anticipated that such would happen.

It is hoped that once the Bill is passed into law it will go a long way in ensuring that the different role players – for example, government, oversight committees, traditional leaders, principal of schools, traditional surgeons, traditional nurses, parents, guardians and the initiates themselves – play their respective roles effectively in order to ensure the practicing of this custom that is free of deaths, injuries and other challenges. Traditional leaders agree with quite a number of provisions in the Customary Initiation Bill as drafted. However, there are also areas which, as

custodians of culture and tradition, we would need to engage seriously with Parliament, with a hope getting you to accommodate our concerns.

## **2. Background**

Initiation is an old revered cultural practice practiced by many cultural communities in South Africa and other parts of Southern Africa. It is a considered secret and sacred by those who practice it. It is not circumcision, circumcision is just a small part of it. It is a school of life that constitutes a rite of passage from boyhood to manhood in some communities, and from one stage of life to another in other communities. It is important that we must debunk the myth that initiation is always a rite of passage from boyhood to manhood, or from girlhood to womanhood. This is not necessarily the case, as there are various stages of initiation in a girl' or a boy's life. Even when it comes to initiation for boys as well, we really need to ask ourselves the thought provoking question, using those initiates who go at age 18. Is it really true that when a boy, at 18, goes to an initiation school, he comes back being a fully fledged man? Some, especially in the context of today, can argue that at 18 you are not necessarily a fully fledged man. However, after that a great leap has been made towards manhood. I am making this remark in order the ensure that there is no conflict among us traditional leaders by arguing who is a man after undergoing initiation, and who is not a man. Some even argue that you actually become a man when you marry a wife, since you are starting your own family. I will later deal extensively with the contentious issue of the right age of attending an initiation school.

We also welcome the covering of cultural initiation for both men and women in the Bill. We must however take cognisance of the reality that the CIB was done to address primarily the challenges facing male initiation, namely, illegal schools, commercialisation of initiation, bogus traditional surgeons, abductions, other illegalities, that often result in injuries and deaths. There are very few challenges associated with initiation schools for girls.

The cultural or language groups in South Africa that practice male initiation are the Vendas, Tsongas, Ndebeles, Sothos, Pedis, Tswanas and Xhosas. Indigenous names for male initiation include *murhundu*, *ngoma*, *inghoma*, *lebollo*, *koma* and *ulwaluko*. The cultural practice of initiation takes place in all provinces of South Africa with varying degrees, depending on the initiation population. With the exception of the

Western Cape Province, all provinces have traditional leaders who are expected to oversee the cultural initiation practice. In the Western Cape, the practice is overseen by representatives of traditional leaders, government officials and members of Initiation Forums.

This cultural practice of initiation has over the years faced serious challenges. These challenges include the mushrooming of illegal schools operated by bogus surgeons, commercialisation of the practice, kidnapping of initiates and other illegalities, all of which have often resulted in the injuries and deaths of initiates. These challenges are particularly rife in the Eastern Cape. In order to deal with the rising challenges in Gauteng, the C R L Rights Commission has suspended initiation in the Province until Summer 2018. The suspension is to enable the relevant legislation to regulate initiation to be promulgated.

Government has introduced various interventions in an effort to deal with the challenges. These interventions include the Twelve Point Plan which, among others, requires that all initiation schools be legal and operated by approved operators, the initiates must be pre-screened for their health status, there must be adequate resources to support the schools, injured initiates must be taken to hospitals for treatment, illegal initiation schools must be closed down and the operators arrested by the SAPS and prosecuted by the NPA. Collectively, the various government departments have a role to play on matters of initiation. For example, the Department of Education deals with matters of School Calendar, the Department of Health and Social Development with the well being of initiates, and traditional leaders with the approval of initiation schools. In addition, Monitoring Teams have been established at both national and provincial level, and the Department of Traditional Affairs has developed a Policy on Initiation.

The Customary Initiation Bill was introduced in the National Assembly on 5 May 2018, has been classified as a section 76 Bill and as a Bill falling within the ambit of section 18(1) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003). The Bill was formally referred to the National House of Traditional Leaders by the secretary to Parliament on 28 May 2018 for inputs.

This submission is made by the National House of Traditional Leaders, a statutory body established in terms of the National House of Traditional Leaders Act, 2009 (Act

No. 22 of 2009). The role of the National House of Traditional Leaders is to promote the role of traditional leadership within a democratic constitutional dispensation. Its main objective is to deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law.

### **3. Traditional Leadership Comments on the Customary Initiation Bill**

However, there are areas in the Bill that the NHTL would like Parliament to seriously relook at:

Below are the comments of the National House of Traditional Leaders as per the different Clauses

#### **Clause 1: Definitions**

- **“abduction”** and **“kidnapping”** – the two terms are quite related and both actions are unlawful. The context in which “kidnapping” is used creates a different meaning to what it really is. It might be necessary to relook at the meaning of the two definitions.
- **“circumcision”** – in the South African context this refers only to male initiates, females are not circumcised at all. We however agree that there should be no acts such as removal of the clitoris and genital mutilation, as it said to be happening in some parts of the African continent.
- **“curriculum”** as a set of learning content for initiation and includes any customary or cultural practice that forms part of the initiation process. Traditional Leaders are of the view that the word “curriculum” should not be defined in the Bill. The traditional and cultural customs and rituals performed and taught at an initiation school are sacred and secret and should not be made public.

#### **Clause 2: Application, objectives, interpretation and prohibitions**

- 2 (4) The minimum age of 40 years may not always be practical, as there are practitioners who may be younger but have proven track records. It is suggested that the 40 years may remain, but it is suggested that the following addition be inserted: “or if someone younger, be someone with appropriate

experience and proven track record recommended by the traditional leader.” Even in the case of medical doctors, there are some who get their academic qualifications their twenties and do Medical Male Circumcision (MMC) for boys either in their private surgeries or hospitals, the procedure of which is basically the same with that performed for initiates in the bush.

- In some other cultures like in Ndebele, the traditional surgeon is not known until the traditional leader reveals him at the correct time. Since the coming together of both the qualified medical doctors who have undergone initiation and nurses, the hybrid system is working well.

#### **Clause 6: Disqualifications**

- Clause 6 of the Bill provides for disqualifications of persons who will not be eligible to be designated as members of the National Initiation Oversight Committee. The National House recommends that members of the National Initiation Oversight Committee should have undergone initiation, otherwise they should not be eligible to be designated as members of the committee.

#### **Clause 11: Establishment, composition and term of office**

Clause 11 of the Bill makes provision for the establishment of PICCs in Provinces and the role of traditional leaders in these structures. However, in the Western Cape Province there are no recognized traditional leaders and no Provincial House of Traditional Leader, but initiation practices do take place every year in both Summer and winter.

Traditional Leaders are of the view that as far as the composition of PICC in the Western Cape is concerned, Khoi-San Leaders must form part of the PICC in the Province. It is suggested that at least three members of the Khoi-San Council must be members of PICC in the Western Cape. People serving in the PICC must also have undergone initiation.

#### **Clause 15: Functions**

- **15 (2) (k):** Consideration must be given to include details about initiates taken to hospitals, and not only for those who have died.

- In some cultures, an initiate is not buried in a normal funeral services but in a private ceremony attended by men who are initiated only. The females are shown the grave after the term of the initiation school has expired. This culture was challenged on a variety of occasions successfully, but some are still hanging on it. It is strongly suggested that the funeral should be in accordance with the custom and the family concerned.
- **15 (7) (a)** – It is suggested that the initiation school to which the initiates from a closed school are transferred to must as far as possible conform to the culture of the transferred initiates.

**Clause 16 (1) (b): Technical Support Teams** - The NHTL suggests the inclusion of the Department of Water and Sanitation.

**Clause 18 (3) (a) and (b)– Government**

**Determination of fees:** In doing so, consideration must be given to cultural variations that have an impact on the determination of exact fees. In some cultures (e.g. the Bapedi in Limpopo and the amaXhosa in the Eastern and Western Cape) the fees paid are inclusive of all costs (including food), whereas in other cultures (e.g. the vaTsonga and the VhaVenda in Limpopo) while fees are paid, the families are responsible for providing food on a daily basis to the initiates. Furthermore, in some cultures, the payment of initiation fees is split: some to the traditional leader in whose area the initiation is taking place, some to the traditional doctor who has a responsibility of “sanctifying” the area where initiation will take place, against evil spirits, and of course the principal of the school must receive something as well. All these need to be taken into consideration when determining appropriate fees, it cannot be a “one size fits all situation”.

It is also suggested that since Medical Male Circumcision is funded by Government, consideration must be given by Government to contribute to the funding of Customary Initiation, and this funding must cover some of the fees as well.

**Clause 22: Parents or legal or customary guardian**

**22(1) (b)** – the practicality on the ground is that a boy can either be medically circumcised before going to an Initiation school, where knowledgeable traditional surgeons know exactly what to do to him without actually fully circumcising him, or he

can be fully circumcised at the initiation school. The option of “not being circumcised at all” should be deleted as circumcision is part of initiation. The NHTL supports a closer working relationship between medical doing MMC with traditional surgeons, but these doctors should be those who have undergone the customary initiation. The same applies to traditional nurses, members of the SAPS and other role players.

Government must consider subsidizing initiation schools, in the same way it is subsidizing Medical Male Circumcision.

**Clause 24 (2) (b): Medical practitioners**

– The supervision of experienced traditional surgeons with good track records by medical doctors is not practical. Provision must be made for the traditional surgeon having adequate experience or having been under the supervision of another experienced traditional surgeon. It is suggested instead that there should be training for traditional surgeons by the Department of Health, including particularly on the interpretation of medical screening reports.

**27 Initiation seasons (1) – (3)** – The NHTL attaches great importance to education, and agrees that everything possible should be done to ensure that all school going pupils have an opportunity to access education. It is suggested, however, that all possible efforts must be made to ensure whatever school time has been lost, due to initiates still completing the required rituals after the initiation, be recovered through other means, e.g. extra classes after school, Saturday classes, etc.

**Clause 28: Consent, prohibitions and circumcision**

**Clause 28 (2)** – Inasmuch as this is provided for in the Children’s Act, the following important point need to be taken into consideration:

- In provinces / cultures where the age of admission to an initiation is 18 and above, that is exactly where deaths and injuries are occurring. The Eastern Cape Province is the case in point.
- In the best practice province of Limpopo where between 20 000 and 30 000 initiates are enrolled every year in Winter, the normal age of admission is around 12 years, and there are no deaths or injuries at all. The Limpopo Initiation Act is also recommending the minimum age of 12 years.

- The practice of boys attending initiation schools at the age below 16 years is now common even in other provinces like Gauteng, Mpumalanga and the North West. Even in the Eastern Cape, where the 18 is preferred, there are so many boys who attend initiation schools at an early age of around 16. It is therefore suggested that based on provincial peculiarities and practical considerations, a lower minimum age must be recommended, based on the culture in question.

N.B. The NHTL therefore proposes that the Children's Act be amended to a lower minimum age of admission to an initiation school to at least 12 years, which is the minimum age in Limpopo for example.

It would seem that when the Children's Act was passed it was not adequately consulted with traditional leaders and traditional communities, especially on matters of initiation, especially with reference to the minimum age. The amendment can either include allowing the circumcision of boys below 16 also for cultural purposes, in addition to the stated medical and religious purposes, or set a minimum age of 12 for admission to an initiation school. The NHTL pleads for the amendment, particularly of section 12 (8) of the Children's Act, taking into serious consideration what is happening on the ground on a large scale, as traditional leaders and other practitioners would like to have a law that is in line with the cultural practices, that of course do not cause any harm to anyone.

N.B. Another section of the Children's Act that the NHTL would like to be amended is section 5 that deals with virginity testing. The reality on the ground, especially in KZN, Mpumalanga and Eastern Cape is that thousands of young girls below 16 willingly agree to be tested for virginity in order to preserve themselves as "izintombi nto" and to keep themselves safe STIs and HIV. The biggest gathering of virginity tested girls (up to 30 000) takes place yearly in Nongoma where girls (mostly around the age of 12 upwards) present reeds to the Zulu King, after being tested and passed their virginity. This is a further example of a provision in a legislation that may not be in line with what is happening on the ground. The NHTL therefore requests the reconsideration of this minimum age of 16 for virginity to be lowered to a minimum of 12, or as per cultural practices in the different provinces.

Clause 28(6) (d) states that a traditional surgeon should be a registered medical practitioner or should be under the supervision of a registered medical practitioner if



he or she is not a registered medical practitioner. The National House is against this clause. A traditional surgeon with a good track record and recommended by traditional leaders does not have to be a medical practitioner and/ or be under the supervision of a medical practitioner as he can be a person authorized in a community to perform male circumcision as part of customary practice of initiation of that community.

#### **Clause 29: Discipline and teachings**

The National House agrees that the initiates must be disciplined and taught life lessons that will make them better citizens.

Clause 29(3) (a) and (b) states what should be included in the initiation teachings and that the initiation teachings must be included in the curriculum. The National House recommend for the scrapping of these sub-clauses as no one can prescribe what should be taught at initiation schools and further that initiation teachings and practices are sacred and secret and cannot be disclosed.

#### **Clause 30:**

There should be no reference to beer not being sold to initiates in the initiation schools as this does not happen in the first place. It may perhaps be enough to say that no illegal activities should be allowed in initiation schools. This would include drugs, gangsterism, etc.

#### **Clause 33: Offenses**

- Fully The NHTL agrees that anybody who breaks the law must be fully punished in terms of the provisions of the law.
- It is suggested everything possible be done to ensure that the SAPS enforce the law and arrest law breakers without fail, and the NPA prosecute them. There is a huge community outcry that the number of arrests and prosecutions do not correspond with the number of arrests and prosecutions. Initiation related crimes should be pursued vigorously like other crimes.
- Bogus traditional leaders who issue permits for the establishment of illegal schools must be arrested and prosecuted without any fear.

- Provision must be made for initiates who break the law to be punished as well, as that may serve a deterrent.
- In the Eastern Cape in particular, most of the deaths and injuries, including penile amputations, are mostly as a result of some traditional surgeons, but mostly traditional nurses who are responsible for the day to day care of initiates.

#### **4. Conclusion**

Once again, traditional leadership appreciates this opportunity accorded to it by Parliament.

We appeal to Parliament to seriously consider our submissions. There has been an outcry in the past that Parliament has the tendency of not taking seriously our inputs when finalising legislation. We keep our fingers crossed and our hopes raised that this time it would be different.

Thank you.



**Ikosi SE Mahlangu**

Chairperson: National House of Traditional Leaders

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