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## GENERAL NOTICE

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### NOTICE 471 OF 2015

#### DEPARTMENT OF TRADITIONAL AFFAIRS

### INVITATION TO COMMENT ON THE DRAFT POLICY ON THE CUSTOMARY PRACTICE OF INITIATION IN SOUTH AFRICA

The Department of Traditional Affairs hereby invites any interested person or body to provide written comments on the Draft Policy on the Customary Practice of Initiation in South Africa as contained in the Schedule hereto.

The closing date for comments is 30 calendar days from the date of publication of this notice in the *Gazette*. All comments must be submitted in the format indicated below:

NAME AND CONTACT DETAILS [Please provide the name of the person or body who submits the comment and contact details, preferably e-mail address]	PARAGRAPH COMMENTED ON [Please indicate which particular paragraph of the Draft Policy the comments relate to]	PROPOSAL [Please provide a clear proposal on how the particular paragraph should be amended]	MOTIVATION [Please provide detailed motivation for the proposed amendment]

Please send your comments to:

Postal address: Director-General: Department of Traditional Affairs  
Private Bag X804  
PRETORIA  
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(Attention: Dr R A Bester)  
E-mail: [RinaldiB@cogta.gov.za](mailto:RinaldiB@cogta.gov.za) and [TrishaR@cogta.gov.za](mailto:TrishaR@cogta.gov.za)



## **traditional affairs**

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Department:  
Traditional Affairs  
**REPUBLIC OF SOUTH AFRICA**

***DRAFT***

### **POLICY ON THE CUSTOMARY PRACTICE OF INITIATION IN SOUTH AFRICA**

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May 2015

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## 1. APPLICATION OF POLICY

- 1.1 This policy applies to the customary initiation practices in respect of both male and female members of traditional communities.
- 1.2 This policy is subject to any legislation that regulates initiation in general, any aspect of initiation or any matter that may be applicable to initiation.
- 1.3 Research was done in respect of the initiation practices of the Khoi-San communities.<sup>1</sup> It was however found that they do not actively practice initiation at this stage. Furthermore, legislation dealing with the statutory recognition of Khoi-San communities and leaders is yet to be enacted.<sup>2</sup> Therefore the principles contained in this policy will only be made applicable to the initiation practices of the Khoi-San communities once such legislation is enacted.<sup>3</sup>

## 2. DEFINITIONS

In this policy, unless the context indicates otherwise, -

“**child**” means a child as defined in section 1 of the Children’s Act, 2005 (Act No. 38 of 2005) and any reference to “children” has a corresponding meaning;<sup>4</sup>

“**CRL Rights Commission**” means the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities as contemplated in section 181(1)(c) of the Constitution, 1996 and the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002 (Act No. 19 of 2002);

“**curriculum**” means a set of learning content for initiation and includes any customary or cultural practice that forms part of the initiation process;

“**DTA**” means the national Department of Traditional Affairs;

“**initiation**” means any customary or cultural practice of traditional communities that is used by such communities as a rite of passage to adulthood in respect of male or female children;

“**initiation school**” means any place where the customary or cultural practices relating to initiation are conducted;

“**Khoi-San**” means any group of persons who are historically regarded as being part of a Khoi-San grouping, including the Cape Khoi, Griqua, Koranna, Nama and San;

“**male circumcision**” means the surgical removal of the foreskin by a medical practitioner or a traditional surgeon as part of a customary male initiation process;

<sup>1</sup> See Annexure A to this policy for a brief summary of the initiation practices of Khoi-San communities.

<sup>2</sup> The statutory recognition of Khoi-San communities and leaders are dealt with in the Traditional and Khoi-San Leadership and Governance Bill (previously known as the Traditional Affairs Bill).

<sup>3</sup> This may require amendments to this policy and any legislation dealing with initiation.

<sup>4</sup> A child as defined in section 1(1) of the Children’s Act, 2005, means a person under the age of 18 years.

“**NIOC**” means the National Initiation Oversight Committee as envisaged by this policy;

“**PICC**” means a Provincial Initiation Coordinating Committee as envisaged by this policy;

“**sacred and secret**” means traditional and/or religious rituals which are performed and taught before, during and after initiation, and which for traditional or religious reasons are not to be made public;

“**traditional community**” means a community recognised as such in terms of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003);

“**traditional leader**” means a person who, in terms of customary law of the traditional community concerned, holds a traditional leadership position and has been recognised in terms of the Traditional Leadership and Governance Framework Act, 2003;

“**traditional leadership**” means the customary institutions or structures, or customary systems or procedures of governance, which are recognised, used or practiced by traditional communities; and

“**traditional surgeon**” means a person who –

- (a) is registered in terms of the Traditional Health Practitioners Act, 2007 (Act No. 22 of 2007) once the relevant provisions of that Act come into operation;<sup>5</sup> or
- (b) prior to the coming into operation of the relevant provisions of the Traditional Health Practitioners Act, 2007, is registered with the relevant PICC in accordance with the provisions of this policy, and is authorised to perform male circumcisions as part of the customary practice of initiation.

### 3. BACKGROUND

3.1 Initiation is a sacred and respected customary practice used as a rite of passage to adulthood. It partakes partly of a civil and partly of a religious character, and is practiced in respect of both males and females. As a civil rite, it introduces initiates into the state of adulthood; as a religious rite it imposes upon them the responsibility of conforming to all the rites and ceremonies of their system of belief. The initiation rite is therefore an embodiment of ideals, values and aspirations of both the individual and the community, reflected in the transfer of certain knowledge and practices during the rite.

3.2 Initiation is practiced by numerous traditional communities in South Africa<sup>6</sup> and it used to be practiced by certain Khoi-San communities.<sup>7</sup> In the case of traditional communities, the practice usually takes place at initiation schools while in the case of Khoi-San communities it

<sup>5</sup> Although certain provisions of the Act came into operation on 1 May 2014, the provisions that are to regulate the registration of traditional surgeons were not in operation at the time of finalization of this policy.

<sup>6</sup> While female initiation practices amongst traditional communities seemed to have become less popular, male initiation is still commonly practiced by the following communities: Vhavenda, amaXhosa, amaNdebele, amaSwati, Basotho, Bapedi, Vatsonga and Batswana. Although, lately, there is no evidence of Zulu people actively practicing male or female initiation, historically male initiation formed an integral part of their customs.

<sup>7</sup> According to information obtained from the National Khoi-San Council and research done by the DTA in 2013, the Khoi-San initiation practices are found mainly amongst the Nama and San groupings.

mostly took place at the location of the specific community.<sup>8</sup> The initiation practices may include teachings about culture and tradition, and the performance of many secret and sacred religious rituals.<sup>9</sup> In some instances the initiation practices include circumcision.<sup>10</sup> It should be noted that circumcision (both male and female) is strictly regulated by section 12 of the Children's Act, 2005 (Act No. 38 of 2005).

3.3 Within traditional communities, initiation is of particular importance in respect of the following:

- The promotion and enhancement of seniority in traditional leadership;
- the promotion and enhancement of seniority within the family;
- the promotion and enhancement of seniority within the community;
- the participation of the entire community in the process of initiation;
- the participation of the entire family (extended family as well) in the initiation process;
- the promotion of social cohesion;<sup>11</sup>
- the teaching of respect; and
- the preservation of cultural, community and family values.

3.4 Furthermore, initiates are taught about traditional leadership genealogy, the genealogy of the family concerned and the values of the community. An important aspect is teachings relating to respect for others, therefore providing a platform for appropriate relationships with other people and communities.

3.5 It should be noted that although initiation has become a scarce practice within Khoi-San communities, it would seem that there has not been any reported case of abuse of Khoi-San initiation practices or initiates.

#### 4. PROBLEM STATEMENT

4.1 The practice of initiation amongst traditional communities and more specifically, male initiation has been subject to abuse. In many instances it has resulted in the death of initiates as well as serious injuries (bodily harm). In the case of male initiation this seems to be mainly due to one aspect of such initiation namely circumcision.

4.2 There seems to be either ineffective or insufficient legislation regulating initiation practices or a disregard for existing laws.

4.3 Initiation schools are in general not properly regulated and managed. Although there is often public reference to "illegal" initiation schools, the fact is that such schools cannot be regarded as "illegal" in the absence of legislation requiring of such schools to be registered and to comply with certain requirements.

<sup>8</sup> As mentioned earlier, the Khoi-San communities do not actively practice initiation anymore, but there are a few individuals (living in cities) who still offer to initiate female children if they so request.

<sup>9</sup> While it is acknowledged that some aspects of initiation may be regarded as secret, no such practice may ever endanger the lives of initiates or be capable of causing serious injuries or harm to initiates. Secrecy is also not an entitlement to disregard any legislation applicable to initiation or certain aspects of initiation.

<sup>10</sup> In the case of the Khoi-San it was confirmed by community members that circumcision (whether male or female) was never part of their initiation practices.

<sup>11</sup> Social cohesion means societal togetherness, particularly in the context of cultural diversity.

- 4.4 During consultations on the original version of this policy, a number of concerns were raised as far as the abuse of initiates and the abuse of the practice as such are concerned. This includes the following:
- (a) The majority of injuries and fatalities that occur at initiation schools are due to the apparent incompetency of people who perform the circumcision ritual on male initiates.
  - (b) In the context of male-circumcision and HIV and AIDS, there is a grave risk that the observance of the custom could be a breeding ground for the disease since it is alleged that in many instances the surgical instrument is used on more than one boy at a time without it being sterilised.
  - (c) Existing health conditions of initiates are not taken into consideration. Modern medication is not allowed at initiation schools resulting in the deterioration of health conditions.
  - (d) Some initiation schools have been opened for personal financial gain only, with the result that the initiates and their well-being are of less importance.
  - (e) In many instances the general care provided to initiates is of poor quality. They are exposed to harsh environmental conditions with insufficient or poor shelter being provided. There is also a lack of access to clean water and appropriate nutrition.
  - (f) There are allegations of drug and substance abuse at initiation schools.
  - (g) While initiation schools are usually located in secluded areas so as not to compromise their operations and functionality, their remoteness and inaccessibility are major obstacles in cases of emergency (such as medical emergencies). On the other hand, the establishment of initiation schools in crowded urban areas without the authority of a traditional leader and also with insufficient space for appropriate initiation activities seems to pose its own unique challenges.
- 4.5 It is therefore imperative that government should take steps to ensure that appropriate, acceptable customs and practices are reinforced and that an acceptable level of accountability that sustained the practice over many years is restored. It is unacceptable that any person should die as a result of initiation practices.

## 5. OBJECTIVES OF POLICY

The main objectives of this policy are the following:

- (a) To protect, promote and regulate initiation and for this purpose, –
  - (i) to provide acceptable norms and standards; and

- (ii) to provide for structures at the national and provincial levels with a view to ensure that initiation takes place in a controlled environment.<sup>12</sup>
- (b) To provide for the protection of life, the prevention of injuries and the prevention of all forms of abuse experienced by initiates before, during and after initiation (physical and mental abuse). This principle underpins the entire process of initiation without any exception.
- (c) To provide for traditional leadership to accept responsibility for the practice of initiation within their communities, in partnership with government and all other role-players.
- (d) To ensure that all role-players accept accountability for their roles within an established governance framework.
- (e) To provide for arrangements in terms of which all activities relating to initiation are coordinated, monitored and evaluated in partnership with traditional leadership.
- (f) To ensure that initiation is not exploited as a commercial enterprise used purely for personal enrichment.
- (g) To ensure that the teachings and rituals that are part of initiation are aimed at character building, the promotion of societal values and the sharing of constructive and factual information about sexuality, gender and reproduction and ultimately to prepare the young people for adulthood (school of life).
- (h) To protect the customary practice of initiation and ensure that it is practiced within the Constitutional and other legal prescripts. Simultaneously, to allow for the practice to evolve within the relevant communities.

## 6. LEGAL FRAMEWORK

Although there is currently no national legislation that regulates the customary practice of initiation in general, there are several national and provincial laws that either deal with specific aspects of initiation or contain provisions that are relevant to initiation.<sup>13</sup>

### 6.1 *Constitution of the Republic of South Africa, 1996:*

- (a) Section 31(1)(a) of the Constitution determines that persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community to enjoy their culture, practice their religion and use their language.
- (b) Section 28(1)(d) of the Constitution determines that every child has the right to be protected from maltreatment, neglect, abuse or degradation.

<sup>12</sup> This includes the principle of uniformity in the sense that the norms, standards and requirements contained in this policy will apply to all initiation practices.

<sup>13</sup> It should be noted that there are also a number of relevant international human rights instruments such as the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. These conventions and charters should be taken into account for purposes of future legislative development.

- (c) Although the Constitution therefore allows cultural practices such as initiation, it also places an obligation on government to ensure that the rights of children are protected.

## 6.2 *Children's Act, 2005 (Act No. 38 of 2005):*

- (a) The Children's Act describes any person below the age of 18 as a "child". Although this Act does not deal with initiation in general, it places very strict conditions on the circumcision of both males and females.<sup>14</sup>
- (b) Section 12(1) states that every child has the right not to be subjected to social, cultural and religious practices which are detrimental to his or her well-being.
- (c) Section 12(3) prohibits genital mutilation or circumcision of female children while section 12(4) prohibits virginity testing of children under the age of 16. In the case of children older than 16, virginity testing may be done if the child has given consent after proper counseling.<sup>15</sup> Section 12(7) also prohibits the marking of the body of any child who was subjected to virginity testing.
- (d) As far as circumcision of male children is concerned, section 12(8) to (10) reads as follows:

*"(8) Circumcision of male children under the age of 16 is prohibited, except when-*

- (a) circumcision is performed for religious purposes in accordance with the practices of the religion concerned and in the manner prescribed; or*  
*(b) circumcision is performed for medical reasons on the recommendation of a medical practitioner.*

*(9) Circumcision of male children older than 16 may only be performed-*

- (a) if the child has given consent to the circumcision in the prescribed manner;*  
*(b) after proper counselling of the child; and*  
*(c) in the manner prescribed.<sup>16</sup>*

*(10) Taking into consideration the child's age, maturity and stage of development, every male child has the right to refuse circumcision."*

- (e) In instances where circumcision forms part of initiation, it would be difficult to argue that it is done for religious purposes as referred to in section 12(8).<sup>17</sup> It is respectfully submitted that circumcision in the context of initiation is a cultural practice and not done for religious purposes as contemplated in the Children's Act.

<sup>14</sup> The definition of "circumcision" in section 1 of the Children's Act is a limited one. It reads as follows: "circumcision", in relation to a female child, means the removal of the clitoris by any means". The definition of "genital mutilation" in relation to a female child "... means the partial or complete removal of any part of the genitals, and includes circumcision of female children". The definition of "exploitation" in section 1 of the Act includes "... the removal of body parts".

<sup>15</sup> For the purposes of virginity testing, Regulation 3(1) of the General Regulations regarding Children as published under Notice R.261 of 1 April 2010, requires of such child to give consent for such a virginity test which consent must be in a specific form as provided for in the Regulations.

<sup>16</sup> In this regard, please see Regulation 5 and Form 2 of the Regulations referred to above.

<sup>17</sup> The term "religious" in general means the showing of belief in and reverence for God or a deity. The term "cultural" in general means denoting or deriving from or distinctive of the ways of living, built up by a group of people (influenced by ethnic and cultural ties).

- (f) It is of utmost importance that all persons involved in initiation practices, including the children, be made aware of the provisions of the Children's Act. Section 305 of the Children's Act determines that a contravention of section 12(8) or failure to comply with section 12(9) is an offence and any person found guilty is liable to a fine or imprisonment of up to 10 years or both such fine and imprisonment.

### 6.3 **National Health Act, 2003 (Act No. 61 of 2003):**

- (a) Section 43(3)(a) of the Act specifies that "*the Minister may, in the interests of the health and wellbeing of persons attending an initiation school and subject to the provisions of any other law, prescribe conditions under which the circumcision of a person as part of an initiation ceremony may be carried out.*" Such conditions may however not be in conflict with section 12(8) of the Children's Act.
- (b) In section 43(3)(b)(i) "initiation school" is defined as "any place at which one or more persons are circumcised as part of an initiation ceremony".<sup>18</sup> This definition is limiting initiation to only one aspect thereof (circumcision) and consequentially also limits it to male initiation. This definition may have to be amended.
- (c) The Health Professions Council of South Africa (HPCSA) issued guidelines in 2007<sup>19</sup> which focus only on consent in general and not on circumcision specifically. It is indicated that in cases where a child is of insufficient maturity or unable to understand the implications of a decision, or if the treatment is urgent or life-threatening, other people may make a decision on behalf of the child. This seems to include circumcision for medical reasons.
- (d) The National Health Act and the HPCSA guidelines therefore focus on specific health aspects relevant to initiation (in particular, male circumcision) and do not deal with any other aspects of the practice.

### 6.4 **Liquor Act, 2003 (Act No. 59 of 2003):**

- (a) It has been reported that liquor is used (and sometimes abused) at some initiation schools. It would seem that persons involved in initiation practices may not be aware of the fact that the Liquor Act has specific provisions dealing with the use of liquor by minors.
- (b) Section 10(1) of the Liquor Act determines that "a person must not sell or supply liquor or methylated spirits to a minor."<sup>20</sup> Subsection (2) determines that "the parent, adult guardian of a minor or a person responsible for administering a religious sacrament, may on occasion supply to that minor a moderate quantity of liquor to be consumed by the minor in the presence and under the supervision of that parent, guardian or other person." The definition of "liquor" in section 1 of the Act includes "beer or traditional African beer".<sup>21</sup>

<sup>18</sup> The section also defines "initiation ceremony" as "a traditional ritual or practice in terms of which a person is inducted into an order or accorded a certain status or recognition within a community."

<sup>19</sup> These guidelines were published under the title "Seeking Patients Informed Consent: The Ethical Consideration".

<sup>20</sup> A minor for the purposes of the Liquor Act, 2005, is a person below the age of 18.

<sup>21</sup> For a definition of traditional African beer, see Schedule 1 to the Liquor Act, 2003.

- (c) Sections 34(1) and 35(1) of the Act makes the contravention of section 10 a serious offence for which a fine of up to R1 million or imprisonment of up to five years may be imposed.
- (d) The provisions of this Act may have serious consequences for any person who provides alcohol (including traditional African beer) to a minor who attends an initiation school. The principals, care-givers and other persons involved in conducting initiation schools may not even be aware of these provisions. Although some people may argue that if any alcohol is provided to initiates during initiation it is done as part of a religious sacrament, it could be difficult to convince the authorities because initiation is generally and widely regarded as a cultural practice. Not all initiates are necessarily religious and therefore it may not be easy to justify the use of alcohol as being part of a religious sacrament. One will then move into the area of having to distinguish between individuals attending the same initiation school. Furthermore, when alcohol is used as part of a religious sacrament, it must be in a moderate quantity (which is unfortunately not defined, but would most probably have to be guided by the quantity provided at a religious sacrament such as Holy Communion).

**6.5 *Traditional Health Practitioners Act, 2007 (Act No. 22 of 2007):***

- (a) This Act does not contain any provisions relating to initiation or circumcision.
- (b) The Act does however contain important provisions relating to the registration of traditional surgeons which provisions are however not yet in operation. It is important that these provisions be applied as soon as possible since any interim measure to register and manage traditional surgeons without a legal basis may prove to be difficult and the enforceability thereof could be challenged.

**6.6 *Provincial legislation:***

- (a) Several provinces have promulgated legislation regulating circumcision such as the Application of Health Standards in Traditional Circumcision Act, 2001 (Act No. 5 of 2001)(Eastern Cape); the Initiation School Health Act, 2004 (Act No. 1 of 2004)(Free State); and the Limpopo Circumcision Schools Act, 1996 (Act No. 6 of 1996).
- (b) A number of concerns have been identified in respect of the provincial legislation which includes the following:
  - (i) The focus of the legislation is on male initiation and more specifically on one aspect thereof namely circumcision as opposed to the overall customary practice of initiation of both males and females;
  - (ii) the roles of the custodians of initiation (traditional leaders) are not clear or they are not involved in the initiation processes and practices;
  - (iii) the legislation do not provide for customary teachings in initiation schools; and

- (iv) in some provinces initiation schools are approved or authorised by a district surgeon as opposed to an appropriate authority or traditional leaders and the relevant traditional surgeons or healers.
- (c) There is a possibility that some provisions contained in the provincial legislation may be in conflict with provisions contained in national legislation such as the Children's Act, 2005.<sup>22</sup> Provincial legislation will have to be aligned with the relevant national laws as referred to in this policy.
- (d) The Mpumalanga Ingoma Act, 2011 (Act No. 3 of 2011) only came into operation on 31 July 2014. This Act is a step in the right direction as it deals with consent requirements, the prohibition of forced attendance of initiation schools, as well as inspections and investigations in respect of initiation practices. It also deals with fees, the duration of initiation schools and offences.

#### 6.7 **Local government by-laws:**

- (a) The Tshwane Metropolitan Municipality promulgated by-laws on initiation schools in 2004.<sup>23</sup>
- (b) A brief analysis of the by-laws indicated that they contain sections that may be in direct conflict with the Children's Act, 2005. They also reduce initiation to a health issue and deal with female circumcision which is prohibited by the Children's Act.
- (c) The by-laws should however also be commended for the attempt they make to regulate initiation schools, circumcision and admission to initiation schools.

## 7. KEY ROLE-PLAYERS

To ensure that the practice of initiation is managed appropriately and successfully, it is of utmost importance that the key role-players are fully aware of, understand and accept their roles, duties, responsibilities and rights.

### 7.1 **Government:**

- (a) National, provincial and local government have to protect, promote and govern the customary practice of initiation. National government has to provide norms and standards through appropriate policies and legislation. Provincial and local government must ensure that provincial legislation and municipal by-laws are aligned with the national norms and standards. All such policies and laws must be guided by the Constitution, 1996 and must take into consideration existing laws dealing with initiation or certain aspects of initiation.
- (b) National, provincial and local government must promote partnerships with traditional leaders to ensure that the practice of initiation complies with prescribed requirements

<sup>22</sup> For example, the Limpopo Act refers to female circumcision which of course is forbidden in terms of the Children's Act, 2005.

<sup>23</sup> City of Tshwane Health By-laws for the Operation and Management of Initiation Schools (26 May 2004).

and is managed effectively. Furthermore, local government has to engage traditional leaders with a view to include initiation as an integral part of municipal plans, especially for the purpose of designating appropriate and accessible land for initiation schools.

- (c) National government has to establish a National Initiation Oversight Committee as contemplated in this policy and provincial governments have to establish Provincial Initiation Coordinating Committees as contemplated in this policy.
- (d) National and provincial governments may determine reasonable fees for conducting an initiation school and for participating in initiation.<sup>24</sup>
- (e) National, provincial and local governments must ensure that all initiation practices comply with relevant legal prescripts and have to enforce the application of such laws.
- (f) National, provincial and local governments must, especially for the purposes stated in paragraph (e), embark on awareness campaigns to ensure that all persons involved in initiation practices are aware of the relevant legislation.

## 7.2 *Houses of traditional leaders:*

- (a) The National House of Traditional Leaders and all provincial houses of traditional leaders have to -
  - (i) perform the functions and duties assigned to them in this policy;
  - (ii) ensure that initiation is practised in terms of customs but also subject to any relevant legal prescripts; and
  - (iii) promote cooperation between traditional leadership and government.
- (b) The National House must, after consultation with all provincial houses, draft guidelines –
  - (i) for the purposes of the screening of principals, traditional surgeons and care-givers as contemplated in paragraph 7.3(b) and (c) of this policy;<sup>25</sup>
  - (ii) on how the rights of the parents or customary or legal guardians of initiates (with special emphasis on the rights of the mother or female guardian of such initiate) can be guaranteed and improved during the initiation period;
  - (iii) relating to the protection of an initiate's health and life; and
  - (iv) relating to discipline at initiation schools.
- (c) The National House may, on request of a PICC and after consultation with any relevant role-player, develop training manuals as contemplated in paragraph 8.3(c) of this policy.

<sup>24</sup> Please see paragraphs 9.1(c) and (d) of this policy.

<sup>25</sup> These guidelines may include minimum requirements for the accreditation of traditional surgeons in view of the allegations that many fatalities are due to the incompetence of many such surgeons. This will of course be subject to any relevant provision of the Traditional Health Practitioners Act, 2007.

### 7.3 **Traditional leaders:**

- (a) The main responsibilities of traditional leaders are –
  - (i) to protect and promote the customary practice of initiation;
  - (ii) to ensure that initiation does not have any adverse affect on the health or lives of initiates;
  - (iii) to accept overall responsibility for initiation practices and initiation schools within the area of jurisdiction of their traditional councils;
  - (iv) to conduct regular inspections of the initiation schools within the area of jurisdiction of such traditional councils; and
  - (v) to assist government in all efforts aimed at addressing the challenges being experienced with initiation.
- (b) Traditional leaders have to screen principals of initiation schools, traditional surgeons and care-givers in accordance with the guidelines developed by the National House as contemplated in paragraph 7.2(b) of this policy, before such principals, traditional surgeons or care-givers will be allowed to participate in initiation practices and schools.
- (c) Subsequent to the screening process referred to in paragraph (b), the traditional leaders have to confirm who the legitimate care-givers are and for which initiate or initiates each of them will be responsible. The details of such care-givers must be submitted by the relevant traditional leader to the envisaged PICC.
- (d) Traditional leaders may delegate amongst themselves specific responsibilities in respect of the various initiation practices and activities.
- (e) Traditional leaders furthermore have to promote compliance with any relevant code of conduct.

### 7.4 **Care-givers:**

- (a) A care-giver is subject to the screening process referred to in paragraph 7.3 of this policy.
- (b) A care-giver is accountable for the well-being of any initiate for whom he or she has been made responsible<sup>26</sup> and must –
  - (i) be at least 21 years old;

<sup>26</sup> On the day that they arrive at the initiation school, initiates are handed over to the principals whereafter the care-givers become responsible for the initiates. These care-givers have to take care of the initiates on behalf of the families until they return home at the end of initiation.

- (ii) have no history or record of criminal conviction of any kind, most importantly, no history or criminal record related to the abuse of children, violent actions or conduct against others or substance abuse;
  - (iii) instill discipline amongst the initiates under their guardianship;
  - (iv) conduct themselves in a manner fit for a tutor of life; and
  - (v) provide the family or customary or legal guardian of the initiate or initiates with health reports within the timeframes to be agreed upon between such care-giver and the relevant family or guardian.
- (c) In the case of male initiation practices where circumcision is part of the process, the care-givers should preferably be males who themselves have been subjected to initiation and circumcision (therefore persons who have knowledge of all aspects of initiation and in this case, male initiation), and must –
- (i) have proven experience in respect of wound management and the application of acceptable hygienic standards;
  - (ii) take precautionary measures to ensure the speedy recovery of initiates after circumcision; and
  - (iii) stay with the relevant initiate or initiates until they are properly healed.<sup>27</sup>

#### 7.5 **Family:**

- (a) The family of an initiate has to ensure that the child is psychologically and physically fit to undergo initiation. For this purpose the family has to take the child to a qualified medical practitioner for the necessary medical tests and to acquire a medical certificate of fitness before the child can attend an initiation school. Such certificate must be handed to the principal of the initiation school. The family must also disclose whether the child is on medication in order for the care-giver to make sure that the child takes his or her medication as prescribed;
- (b) The family furthermore has to satisfy itself that all the persons involved in the management or conducting of the relevant initiation school and the initiation processes or any part thereof, have reliable track records in respect of initiation and that they are known by the relevant royal families and/or traditional leaders residing within the

<sup>27</sup> Although not directly linked to initiation, note should be taken of the definition of “care-giver” in section 1 of the Children’s Act, 2005. It is defined as “any person other than a parent or guardian, who factually cares for a child and includes-

- (a) a foster parent;
- (b) a person who cares for a child with the implied or express consent of a parent or guardian of the child;
- (c) a person who cares for a child whilst the child is in temporary safe care;
- (d) the person at the head of a child and youth care centre where a child has been placed;
- (e) the person at the head of a shelter;
- (f) a child and youth care worker who cares for a child who is without appropriate family care in the community; and
- (g) the child at the head of a child-headed household”.

Also see section 32(1) of the Children’s Act, 2005.

particular area. This is especially important in respect of the principal of the initiation school and the traditional surgeon(s) involved in the case of male circumcision.

- (c) Another important responsibility of the family is to designate a care-giver who will be responsible for the initiate. This has to be done in consultation with the relevant traditional leader after the screening process referred to in paragraph 7.3(b) and (c) of this policy.
- (d) The family also has to ensure that the academic education of the child is not neglected as a result of his or her attendance of an initiation school.
- (e) The family has the right to receive regular health reports in respect of the relevant child or children from the care-giver and members of the family or their appointed representative should have reasonable access to the initiates.

#### 7.6 **Women:**

- (a) The term “women” in the context of this discussion refers to the mother of a child or a female customary or legal guardian of a child.
- (b) The roles and rights of women in relation to the initiation practices of traditional communities have for a long time been a sensitive subject. On the one hand there are customs dictating whether women have any roles or rights and if so, the extent thereof. On the other hand there are Constitutional principles (especially those contained in the Bill of Rights) which may be infringed upon if women are simply excluded from initiation practices or schools. The reality is that the roles and rights of women can no longer be ignored.
- (c) The mother of an initiate does not stop to be the child’s mother during the initiation period and therefore her parental rights should be respected and not be denied unreasonably especially not in instances where it concerns the health and general well-being of the child. However, since the parents of a child have to provide consent for such child to undergo initiation, the mother has to accept that she will not have unlimited and unreasonable access to the child and that she may not attend initiation activities if such attendance is not allowed in terms of customs.
- (d) Women also have an important role to play as care-givers to female initiates.
- (e) Based on the Constitutional principles referred to and the provisions of the laws discussed under paragraph 6 of this policy, it is respectfully submitted that women should have the right –
  - (i) to decide together with their children whether the children should attend an initiation school or not (and notwithstanding the provisions relating to consent as referred to in paragraph 9.2 of this policy);
  - (ii) to decide together with a male initiate whether he, in the case of male circumcision, should be circumcised medically or traditionally or not at all; and

- (iii) to be informed of the well-being of their children during initiation and if necessary, to attend to children who fall sick during initiation.

## 8. POLICY PROPOSALS: COORDINATING STRUCTURES

To address the challenges being experienced with initiation including the apparent lack of sufficient and effective management and coordination of initiation in general, it has become necessary for government to introduce specific measures and structures. Initiation is to a large extent provincial specific and since it is also a cultural practice which is a functional area of concurrent legislative competence in terms of Schedule 4 to the Constitution, 1996, it would seem appropriate that effective control measures be introduced at the provincial level. However, national government has an important role in setting norm and standards and for this reason a specific national oversight structure is also proposed.

### 8.1 *National Initiation Oversight Committee:*

- (a) It is proposed that the national Minister for Cooperative Governance and Traditional Affairs establishes a National Initiation Oversight Committee (NIOC) consisting of –
  - (i) two members of the National House of Traditional Leaders designated by the members of the National House from amongst themselves;
  - (ii) one Commissioner from the CRL Rights Commission designated by the Commissioners of the Commission from amongst themselves;
  - (iii) two officials from the Department of Traditional Affairs designated by the Director-General of the Department; and
  - (iv) not more than two other persons designated by the Minister.<sup>28</sup>
- (b) The NIOC must –
  - (i) elect a chairperson from amongst themselves;
  - (ii) meet at least four times per annum in Pretoria; and
  - (iii) perform the functions and responsibilities contemplated in paragraph (c).
- (c) The proposed functions and responsibilities of the NIOC are the following:
  - (i) To promote compliance with the provisions of this policy amongst all role-players who are involved in initiation practices and initiation schools;
  - (ii) to monitor the implementation of the policy and review it accordingly;

<sup>28</sup> If these persons are not government officials, they may have to be paid an allowance or appropriate fee which will result in additional financial expenditure.

- (iii) to inspect any initiation school to establish whether such a school meets the requirements set out in this policy;
  - (iv) to investigate any alleged abuse of initiates;
  - (v) to make recommendations to the relevant PICC in respect of the closing of any non-registered school or the deregistration of any initiation school that does not comply with or meet the requirements of this policy;
  - (vi) to provide the Minister and relevant Premiers with reports on each inspection or investigation conducted;
  - (vii) to prepare a national report on initiation after each initiation season;
  - (viii) to oversee initiation awareness campaigns conducted by the PICCs;
  - (ix) to guide PICCs on the implementation of this policy and initiation practices in general;
  - (x) to keep comprehensive statistics on initiation; and
  - (xi) to perform any other task relating to initiation as may be directed by the Minister.
- (d) The DTA has to provide administrative and financial support to the NIOC.
- (e) The term of the NIOC is to be determined by the Minister, taking into account the terms of the National House and the CRL Rights Commission.

## 8.2 ***Provincial Initiation Coordinating Committees:***

- (a) It is proposed that each provincial government, in consultation with the provincial house of traditional leaders (provincial house), establishes a Provincial Initiation Coordinating Committee (PICC) for such province. The main objective of a PICC will be to administer and oversee all initiation schools and practices in the particular province. A PICC must be established well in advance of the initiation season and may be established annually or once-off for the duration of the term of office of the provincial house.
- (b) A PICC must consist of –
- (i) the chairperson of the relevant provincial house who will be the chairperson of the PICC;
  - (ii) three other members of the provincial house elected by the provincial house from amongst its members; and
  - (iii) two senior officials from the provincial government designated by the MEC responsible for traditional affairs in the province:

Provided that at least two members of the PICC must be women.

- (c) A PICC must, in liaison with the head of each of the government departments, traditional leadership councils or institutions referred to hereunder, establish a technical support team consisting of not more than two representatives each of –
- (i) the provincial Department of Health;
  - (ii) the provincial department responsible for traditional affairs;
  - (iii) the provincial Department of Basic Education;
  - (iv) the provincial department responsible for arts and culture;
  - (v) the South African Police Service;
  - (vi) the provincial Department of Social Development;
  - (vii) the relevant kingship or queenship councils, principal traditional leadership councils or traditional councils;
  - (viii) the relevant local and district municipalities;
  - (ix) the emergency services within the particular area; and
  - (x) any other interested body as identified by the PICC:<sup>29</sup>

Provided that the PICC may, when necessary, co-opt representatives from the following government departments or institutions to the technical support team:-

- (aa) the CRL Rights Commission;
  - (bb) the Department of Justice;
  - (cc) the Department of Women;
  - (dd) the national Department of Health; and
  - (ee) the national Department of Social Development.
- (d) In instances where initiation is to be conducted in a province without a provincial house but with recognised traditional leaders, the relevant provincial government must, in liaison with the National House of Traditional Leaders (NHTL), establish a PICC consisting of not more than two representatives each of –
- (i) the NHTL;
  - (ii) recognised traditional leaders within that province;

<sup>29</sup> This should include recognised organisations representing women and similar organisations representing the youth. However, for practical reasons, it would be preferred that such representatives are from organisations based within the particular province.

- (iii) relevant departments from that provincial government;
  - (iv) the relevant local and district municipalities; and
  - (v) the emergency services within the particular area.
- (e) In instances where initiation is to be conducted in a province without a provincial house and without recognised traditional leaders, the relevant provincial government must, in liaison with the NHTL, establish a PICC consisting of not more than two representatives each of –
- (i) the NHTL;
  - (ii) relevant departments from that provincial government;
  - (iii) the relevant local and district municipalities; and
  - (iv) the emergency services within the particular area.
- (f) In the instance of a PICC as contemplated in paragraphs (d) or (e), -
- (i) the provincial government together with the PICC must consider whether a technical support team as contemplated in paragraph (c) would be required and if so, may apply the provisions of paragraph (c) except for any such provision that may not be relevant to the particular province; and
  - (ii) the NHTL representatives must be persons who are conversant with the customary practices of the communities in that province.
- (g) The provincial department responsible for traditional affairs must provide administrative and financial support to the PICC.

### 8.3 ***Functions of Provincial Initiation Coordinating Committees:***

- (a) The main functions of a PICC will be the coordination of all initiation schools, practices and activities within the particular province. This includes the following:
- (i) Consideration of applications by principals or any other person to open initiation schools, registering successful applications and keeping registers of approved initiation schools and screened principals: Provided that any application to register an initiation school must be made at least one month prior to the intended opening of such school and may only be made in respect of one initiation season (winter or summer). Therefore, a separate application has to be made in respect of each initiation season. All applications must indicate the proposed start and end dates of the initiation school;
  - (ii) determining the number of initiation schools to be allowed in the province taking into account criteria such as the proximity of the schools to one another, the

number of available qualified and experienced traditional surgeons,<sup>30</sup> the availability of sufficient and appropriate space and land, and the provisioning of proper habitable structures conducive to initiation practices;

- (iii) determining the maximum number of initiates that may be admitted to a specific initiation school;
- (iv) developing criteria and requirements with which prospective initiation schools must comply prior to such schools being registered and opened, to ensure that the overall objectives and directives of this policy are met, including health and safety requirements;<sup>31</sup>
- (v) determining the process to be followed by prospective initiation schools for the purposes of the registration of such schools;
- (vi) consideration and approval of the curriculum of any prospective initiation school;<sup>32</sup>
- (vii) ensuring that only registered schools conduct initiation in the province and that any non-registered school is reported to the SAPS, closed forthwith and that steps are taken against those who are responsible for conducting initiation at non-registered initiation schools;
- (viii) ensuring that any abuse of initiates whether at a registered or non-registered initiation school, is reported to the SAPS and dealt with in accordance with the provisions of any applicable legislation;
- (ix) ensuring that potential initiates have been issued with the necessary medical certificates contemplated in paragraphs 7.5(a) and 9.5(a) of this policy, declaring them fit to undergo initiation;
- (x) ensuring that initiates have all required consent documents as referred to in paragraph 9.2 of this policy;
- (xi) monitoring and evaluating the general functioning of initiation schools during the initiation period, including the question whether such school operates within its approved curriculum or not: Provided that any school that is found to no longer meet the requirements of this policy, must forthwith be closed and deregistered;
- (xii) ensuring that initiates are properly taken care of at all times by providing advice and expertise to care-givers;
- (xiii) ensuring the safety of initiates in conjunction with the relevant traditional leaders;

<sup>30</sup> This should be done in consultation with the traditional leaders since they are the persons who usually are aware of who the experienced traditional surgeons and care-givers in their respective areas are.

<sup>31</sup> The criteria with which a prospective initiation school must comply will serve as guidelines at this stage since a policy does not have legislative status and is thus not enforceable.

<sup>32</sup> For this purpose, it is proposed that the person who will be in charge of the initiation school (the principal) should present the proposed curriculum to the PICC to enable the PICC to actively engage on the curriculum. The initiation teachings should consist of civic and religious elements and should be aimed at teaching the children about their ancestry, belief systems and the challenges and responsibilities of adulthood.

- (xiv) keep a complete database per initiation school which database must include –
- (aa) any reports relating to initiation as conducted at such schools;
  - (bb) the daily visitor records of such schools;
  - (cc) financial reports containing details of all income (contributions) and expenditure;
  - (dd) the full names of all initiates and their identity numbers;
  - (ee) the names and contact details of the parents or customary or legal guardian of the initiates;
  - (ff) the full names, identity number and qualifications of the medical practitioner or traditional surgeon who performed or will perform male circumcision;
  - (gg) the date on which circumcision was done; and
  - (hh) any specific health problems being experienced by the child.
- (b) In addition to the above-mentioned functions, a PICC also has to –
- (i) promote cooperation between traditional leadership, government and any other role-players in respect of initiation schools and practices;
  - (ii) provide advice to initiation schools on any matter relating to initiation;
  - (iii) coordinate the flow of information between different role-players, including information relating to interventions in initiation schools;
  - (iv) develop a code of conduct for all involved in initiation and to ensure that all such persons receive a copy of the code of conduct; and
  - (v) conduct awareness campaigns on initiation within the province.
- (c) A PICC should develop appropriate training manuals and train, or arrange for the training of, principals, traditional surgeons and care-givers on any matter relating to initiation, especially the educational and health aspects thereof. In the case of traditional surgeons who will be required to perform male circumcisions, the PICC should request that they be trained by the provincial Department of Health or by anyone as arranged by that Department.
- (d) Until such time as the relevant provisions of the Traditional Health Practitioners Act, 2007 come into operation, a PICC must, as an interim measure, register traditional surgeons as contemplated in paragraph (b) of the definition of “traditional surgeon” in paragraph 2 of this policy, taking into account the guidelines developed by the National House as contemplated in paragraph 7.2(b)(i) of this policy.

- (e) A PICC furthermore has to consider and resolve any disputes on matters relating to initiation and must do so in accordance with the relevant provisions of applicable legislation, if so allowed by the legislation.
- (f) In instances where an initiation school has been closed or deregistered, the PICC has to arrange for the relevant initiates who attended that school to be transferred to another initiation school provided that such a school is in a position to accommodate the additional child or children (and of course subject to all relevant provisions of this policy).

## 9. POLICY PROPOSALS: OPERATIONAL MATTERS

### 9.1 *Initiation schools:*

- (a) An initiation school must be registered in accordance with the provisions of this policy. In instances where non-registered initiation schools are found to be conducting initiation practices, the children attending such school must be regarded as abducted and relevant legislation must be enforced accordingly.<sup>33</sup>
- (b) In instances where an initiation school is to be located outside the area of jurisdiction of a traditional council where such a council exists, such as on either privately-owned or state land, the principal, traditional surgeon or healer, or any other person who intends to hold an initiation school must, in addition to any other requirements referred to in this policy, also obtain the written approval of -
  - (i) the owner or lawful occupier of such privately-owned land; or
  - (ii) the relevant organ of state responsible for the management of the particular state land.
- (c) A provincial government must, subject to paragraph (d) and after consultation with the relevant PICC, determine registration fees to be paid for conducting an initiation school, reasonable fees to be paid per initiate for undergoing initiation and the payments to be made to traditional surgeons and care-givers. For this purpose the provincial governments may invite representatives of traditional surgeons and care-givers to provide inputs on the fee structure.
- (d) The DTA may determine norms and standards in respect of the determination of fees and the upper limits of such fees.

### 9.2 *Consent and prohibitions:*

- (a) Initiation is a voluntary customary practice and therefore no person may be forced or coerced into attending any initiation school or undergo any initiation practices.

<sup>33</sup> The Criminal Procedure Act, 1977 (Act No. 51 of 1977) will apply.

- (b) Before any prospective initiate may attend an initiation school, such initiate, his/her parents or customary or legal guardian and the traditional leader of the area where initiation is to be conducted must give written consent for the person to undergo initiation. All written consents must be handed to the principal of the initiation school and he or she must submit it to the PICC. Written consents must at least indicate the identity number, full names and gender of the initiate.
- (c) While according to customs there seems to be no minimum or maximum age for a person to undergo initiation, it is important that any prospective initiate must be old enough to understand the teachings about adulthood imparted at an initiation school. Therefore, although it is at this stage left to the parents or customary or legal guardians to decide whether a particular child is ready for initiation, it is submitted that the minimum age for a person to undergo initiation should be 16. Furthermore, the PICC should be able to refuse to allow a prospective initiate to undergo initiation based on any reasons or evidence brought to its attention which may indicate that the child is not yet ready for initiation or is unable or unwilling to assent to undergoing initiation. This may be related to, but is not limited to, the physical or mental capacity of the child. Note however that the proposed age of 16 will not legalise male circumcision; in instances where male circumcision is part of the initiation process the provisions of the Children's Act, 2005 shall still apply.<sup>34</sup>
- (d) If male circumcision is part of the initiation process and the child has not been circumcised prior to attending the initiation school, the consent referred to in paragraph (b) must clearly indicate whether it includes consent to circumcision or not.
- (e) Under no circumstances may an initiate be subjected to any physical harmful activities and no consent may be given in this regard. This includes genital mutilation or virginity testing in the case of females, cutting of the skin or other ways of permanent marking the skin.

### 9.3 **Initiation season:**

- (a) Initiation seasons must be aligned with the relevant provincial school holidays and may under no circumstances interfere with official school terms.
- (b) Anyone whose initiation school commences before a school holiday or continues beyond a school holiday, or continues outside the period for initiation submitted to the PICC as part of the application process, is liable to suspension from conducting initiation schools for a period determined by the PICC taking into account customs and customary law, or is liable to any penalties as may be prescribed by legislation: Provided that if the PICC fails to act appropriately, the MEC responsible for traditional affairs in the relevant province or the national Minister responsible for traditional affairs may act accordingly.

### 9.4 **Discipline:**

- (a) The care-givers and principals of initiation schools must ensure discipline amongst initiates at all times. Misconduct and immoral behavior must be discouraged and should

<sup>34</sup> See section 12 of the Children's Act, 2005 as discussed under paragraph 6.2 of this policy.

be corrected. The abuse of liquor, including traditional beer, is not permitted and the use thereof is subject to the provisions of the Liquor Act, 2003 (Act No. 59 of 2003).<sup>35</sup>

- (b) An initiate may not be abused under the guise of discipline.
- (c) Any discipline imposed at an initiation school is subject to the guidelines as contemplated in paragraph 7.2(b)(iv) of this policy.

#### 9.5 **Health aspects:**

- (a) Prior to participating in any initiation school or practices, a prospective initiate must obtain a medical certificate issued by a medical practitioner, declaring such prospective initiate fit to participate in the initiation practices and that he or she has no medical, physical or mental condition that may cause unnecessary complications during or after the initiation.<sup>36</sup> The medical certificate must specifically indicate whether the child has any bleeding disorder or congenital abnormalities.
- (b) A traditional surgeon who is to be involved in any aspect of initiation must be registered.<sup>37</sup> The PICC must keep a register of all qualified and experienced traditional surgeons for the particular province.
- (c) In the case of male initiation where circumcision forms part of the process –
  - (i) only a registered male traditional surgeon as contemplated in the definition of “traditional surgeon” in paragraph 2 of this policy (or registered medical practitioner<sup>38</sup>) may perform such circumcision;
  - (ii) the traditional surgeon must observe due care and diligence, and maintain appropriate health and hygienic standards as prescribed in the Traditional Health Practitioners Act, 2007;
  - (iii) the traditional surgeon is prohibited from conducting circumcision without obtaining the initiate’s medical examination certificate declaring him fit to undergo initiation and circumcision, as well as the required consent referred to in paragraph 9.2 of this policy;
  - (iv) the traditional surgeon is fully responsible for the medical treatment and care of the initiates during the circumcision process and any medical treatment that may be required following the circumcision;
  - (v) the care-givers are responsible for monitoring the initiates after circumcision and to forthwith inform the traditional surgeon if any initiate requires medical attention: Provided that if the child displays any bleeding disorder or any other symptom of

<sup>35</sup> See the discussion of the Liquor Act, 2003 under paragraph 6.4 of this policy.

<sup>36</sup> It is recommended that prospective initiates and their parents or customary or legal guardians be briefed by qualified medical practitioners in respect of the possible medical risks of initiation practices, especially circumcision in the case of male initiation, to ensure they take informed decisions.

<sup>37</sup> See paragraph 8.3(d) of this policy.

<sup>38</sup> A traditional community or family may invite a qualified and registered male medical practitioner to perform circumcision within the confines of the customs and traditions of that particular community or family, provided he has undergone initiation himself.

discomfort or infection, the relevant care-giver must forthwith arrange for the child to receive medical attention.

- (d) During initiation, initiates must at all times be provided with clean water, sufficient sanitation facilities and a healthy and balanced diet. The required food must be provided by the families of the initiates. The PICC must be informed well in advance of any instance where a needy family would not be in a position to provide such food. The PICC should put plans in place on how to deal with such cases.
- (e) The principals of initiation schools must, to the satisfaction of the PICC, ensure that initiates have access to health care facilities whenever the need arises.

## 10. OFFENCES

- 10.1 Since a policy does not have the force of law it cannot make provision for offences and appropriate sanctions. However, if this policy is converted into law, such law will include offences and sanctions.
- 10.2 It should be noted that the laws discussed under paragraphs 6.2, 6.3 and 6.4 of this policy do make provision for offences and sanctions when the provisions of those laws are contravened.

## 11. RECOMMENDATIONS

- 11.1 It is recommended that the principles contained in this policy -
  - (a) be adopted; and
  - (b) be converted into national legislation to ensure the effective enforcement thereof, to set norms and standards and to promote a uniform approach towards initiation.<sup>39</sup>
- 11.2 If recommendation 11.1(b) is approved, it is recommended that the following interim measures be implemented until such time that the national legislation is enacted:
  - (a) All provincial governments and other role-players must be made aware of the provisions of this policy and be requested to implement the principles contained in this policy insofar as it is not inconsistent with existing national or provincial legislation or municipal by-laws.
  - (b) Provincial governments and relevant municipalities could consider the alignment of their existing provincial legislation and municipal by-laws with the principles contained in this policy.<sup>40</sup>

<sup>39</sup> Initiation is a cultural practice. "Cultural matters" is listed in Schedule 4 to the Constitution, 1996, as a functional area of concurrent legislative competence. Therefore both national and provincial legislatures may legislate on initiation. On national level, such legislation can serve as a framework. Such legislation will also deal with offences and appropriate sanctions.

<sup>40</sup> If national legislation is enacted, the existing provincial legislation and municipal by-laws will have to be amended to ensure alignment with such national framework legislation.

- (c) The structures proposed in this policy (NIOC and PICCs) could be established informally to perform the functions contemplated in this policy, except for a function that would have to be provided for in legislation.

11.3 If recommendation 11.1(b) is not approved, it is recommended that existing provincial legislation and municipal by-laws be amended as a matter of priority to accommodate the principles contained in this policy.

11.4 It is furthermore recommended that –

- (a) all initiation role-players be alerted to the fact that there are existing national laws that contain provisions relating to health aspects, circumcision, age requirements and the use of liquor which laws must strictly be adhered to;<sup>41</sup>
- (b) the Department of Health attends to the commencement of those provisions of the Traditional Health Practitioners Act, 2007 which are required for the registration of traditional surgeons; and
- (c) monitoring and evaluation systems developed for the purposes of this policy may include a hotline where any person may report alleged abuse of initiates.<sup>42</sup>

11.5 Lastly, it is recommended that the National Khoi-San Council be requested to identify appropriate and effective ways in which the initiation practices of interested Khoi-San communities can be revived. For this purpose the DTA may assist the Council where possible (such as with research) and also engage other relevant government departments.

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<sup>41</sup> Government, the houses of traditional leaders and the proposed NIOC and PICCs must embark on awareness campaigns to ensure that all persons involved in initiation are aware of the existing relevant legislation.

<sup>42</sup> Legislation should also make provision for appropriate intervention by the Minister or MECs in any instance where a structure fails to perform its duties.

**ANNEXURE A**  
**KHOI-SAN INITIATION PRACTICES**

- A1. The DTA was advised by the National Khoi-San Council (NKC) that their initiation practices are mostly found amongst the Nama and San communities. The related research was therefore focusing on two areas where there is a concentration of Nama communities (Riemvasmaak and Kuboes) and two areas where San communities are found (Askham and Kimberley).<sup>43</sup>
- A2. For purposes of interviewing the community representatives, a questionnaire was developed to guide the researchers in respect of the kind of information to be obtained.<sup>44</sup>
- A3. *Male initiation:*
- (a) As far as male initiation is concerned, there are basically two phases namely teachings that take place throughout the boy's life and a hunting mission at the age of approximately 16. As far as teachings are concerned, the elders focus on teaching the boys about community and family traditions, as well as the use of natural medicines.
- (b) As far as hunting is concerned, a young boy, when he reaches the age of 16, has to convince the community elders that he is ready to enter the adult world. This is done by proving to them that he can hunt on his own. The purpose of this is for him to prove his capability to take care of himself (by providing food and water for himself, as found in nature). Whatever the boy hunts, it must be an animal that can be eaten by the community. Once he has successfully killed an antelope, he has to slaughter it and take the meat back to the community. In doing so he proves that he can provide food to the community and ultimately, his own family. Traditionally, the hunting could take place at any time of the year. Now however, there are many limitations which are seen by some of the communities as unacceptable and even deliberate obstacles which they believe will eventually result in the abandonment of the practice of male initiation. These challenges relate amongst others to the following:
- (i) School terms: The boys have to go to school in terms of law and therefore they are limited to hunting during school holidays. Also, the fact that they attend school means that they now spend very little time with the elders, making it difficult to receive their teachings in respect of traditions, tracking and survival skills, to name a few.
- (ii) Hunting season: In terms of law there is a specific hunting season. This means that the boys can only hunt during that season, but in many instances there are other school activities during the school holidays which make it more difficult for the boys to go back to their communities for hunting.

<sup>43</sup> All four areas are in the Northern Cape province.

<sup>44</sup> The questionnaire focused amongst others on –

- ✦ whether both boys and girls undergo initiation and if so, what the differences between the two practices are;
- ✦ the age at which they have to undergo initiation;
- ✦ the role of parents during initiation;
- ✦ whether there are any secretive aspects;
- ✦ whether there are any dangerous or life threatening aspects;
- ✦ whether initiates have access to food and water at all times;
- ✦ whether circumcision or any form of mutilation forms part of the practice or rituals; and
- ✦ whether initiation is still being practiced and if not, why not.

(iii) Hunting permits: In addition to the hunting season, there is also the requirement of a hunting permit. In some instances the communities live very far from the nearest permit office. Also, permits for certain areas put a restriction on the kind of game to be hunted, therefore making it even more difficult for the boys to hunt something that would traditionally be acceptable.

(c) At no stage during the initiation process does any bodily mutilation or rituals concerning the physical body of the boy occur. The boy is also not subjected to any kind of physical exercise or forced to do rituals that are harmful or potentially harmful. Circumcision is not part of male initiation and is only done in exceptional cases for medical reasons.

#### A4. *Female initiation:*

(a) The initiation of a girl commences when the girl menstruates for the first time.<sup>45</sup> The girl's face is covered and she is immediately taken away and put in a hut away from the other huts. She is in fact isolated from the rest of the community.<sup>46</sup> Traditionally the girl remained isolated for two to three weeks, however in the recent past it has been for the duration of the first menstruation, thus approximately five days.<sup>47</sup>

(b) During the isolation period the girl is constantly taught the "facts of life" by the caregivers. There are no sinister reasons for the isolation; it is purely to ensure that the girl will focus on the teachings of the elders without any distractions. Therefore, during this period, the girl is also not allowed to have access to any modern facilities such as television or cellular phones. The first important lesson during the period of isolation deals with menstruation as such. The elderly women explain to the girl what is happening to her body. She is taught how to deal with it and which signs to look for that may require medical attention. Furthermore, the girl is taught about sex and the possible consequences and dangers thereof.<sup>48</sup> It is explained to her that she has now become a woman and that she will have certain responsibilities. It is furthermore explained that once she is married, she will be responsible for fostering family values.

(c) At no stage during the initiation process does any bodily mutilation or rituals concerning the physical body of the girl occur. The girl is also not subjected to any kind of physical exercise or forced to do rituals that are harmful or potentially harmful.

(d) The initiation of young girls used to be an integral part of the Nama and San traditions, but is now taking place on a voluntary basis. Urbanisation is one of the main reasons why the initiation of girls in the traditional manner has become very scarce.

<sup>45</sup> This is usually around the age of 12, but there have been instances in the community where it occurred as late as at the age of 16.

<sup>46</sup> This is referred to as the "hokmeisie" in Afrikaans and is traditionally a small thatched hut. Where this practice occurs in more formal townships, the girl is taken to an outside room of the house, if there is one, or one of the rooms inside the house provided it suits the needs of the girl and elders.

<sup>47</sup> There are two reasons for this shortened period, namely –

(a) the initiation process may not interfere with the official school terms; and

(b) the majority of the young girls now grow up in cities and towns where the absence of facilities (such as a hut) makes isolation more difficult and challenging.

<sup>48</sup> According to the persons interviewed, there is however no testing of whether the girl is still a virgin or not.

**ANNEXURE B  
CONSULTATIONS**

B1. The following departments and institutions were consulted and/or attended two consultative workshops which were held in August 2011:

- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
- Commission on Traditional Leadership Disputes and Claims
- Department for Women, Children and People with Disabilities
- Department of Arts and Culture
- Department of Communications
- Department of Health
- Department of Higher Education
- Department of Justice and Constitutional Development
- Eastern Cape Department of Local Government and Traditional Affairs
- Eastern Cape House of Traditional Leaders
- Free State Department of Cooperative Governance, Human Settlements and Traditional Affairs
- Gauteng Department of Local Government and Housing
- Independent Complaints Directorate
- Limpopo Department of Cooperative Governance and Human Settlements
- Limpopo Provincial House of Traditional Leaders
- Mpumalanga Department of Cooperative Governance and Traditional Affairs
- Mpumalanga Provincial House of Traditional Leaders
- North West Department of Local Government and Traditional Affairs
- Northern Cape Department of Cooperative Governance, Human Settlements and Traditional Affairs
- Northern Cape Provincial House of Traditional Leaders
- South African Local Government Association (SALGA).

B2. An Initiation Indaba was held with key role-players on 7 June 2013. The participants at the Indaba agreed that initiation has to be conducted in line with 12 guiding principles, with the ultimate goal of protecting the lives of the initiates. These guiding principles (which are already captured in the policy) are as follows:

- (a) Governance mechanisms;
- (b) functions of Coordinating Committees;
- (c) management of initiation schools;
- (d) prohibition of forced attendance of initiation schools, age and consent;
- (e) season for initiation;
- (f) guardian responsibilities towards initiates;
- (g) discipline management;
- (h) structures and guidelines for fees;
- (i) initiation curriculum;
- (j) nature and role of traditional surgeons;
- (k) nutrition; and
- (l) medical and emergency arrangements.

B3. In the course of 2014, the draft policy was referred to the following departments and institutions for comment:

(a) *National departments:*

- Agriculture, Fisheries and Forestry
- Arts and Culture
- Basic Education
- Communications
- Cooperative Governance
- Environment
- Health
- Higher Education and Training
- Human Settlements
- Justice
- Mineral Resources
- Presidency
- Rural Development and Land Reform
- South African Police Services (SAPS)
- Social Development
- Tourism
- Water Affairs
- Women

(b) *Provincial departments:*

- Eastern Cape:
  - Cooperative Governance and Traditional Affairs (CoGTA)
  - Health
  - Social Development
  - SAPS
- Free State:
  - CoGTA
  - Health
  - Social Development
  - SAPS
- Gauteng:
  - CoGTA
  - Health
  - Social Development
  - Community Safety
- KwaZulu-Natal:
  - CoGTA
  - Health
  - Social Development
  - Community Safety
- Limpopo:
  - CoGTA
  - Health
  - Social Development
  - SAPS

- Mpumalanga:
  - CoGTA
  - Health
  - Social Development
  - SAPS
- North West:
  - CoGTA
  - Health
  - Social Development
  - SAPS
- Northern Cape:
  - CoGTA
  - Health
  - Social Development
  - SAPS
- Western Cape:
  - Office of the Director-General

(c) *Other stakeholders:*

- African Religion
- Commission for Gender Equality
- Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission)
- CONTRALESA
- Government Communications and Information Services (GCIS)
- Health Professions Council of South Africa (HPCSA)
- Human Sciences Research Council (HSRC)
- National Interfaith Council of South Africa (NICSA)
- National Prosecuting Authority (NPA)
- Public Protector
- South African Council for Social Services Professions (SACCCP)
- South African Human Rights Commission (SAHRC)
- South African Law Reform Commission
- South African Local Government Association (SALGA)
- Secretariat for Police
- Traditional Healers Organisation
- National House of Traditional Leaders (who in turn referred the draft policy to all provincial houses of traditional leaders).





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