



Commission for Gender Equality

Investigative Report into the 'Maiden Bursary Scheme' by the
UThukela District Municipality

Summary of Key Findings & Recommendations

2016

1. INTRODUCTION

During the month of January 2016 the Commission for Gender Equality (CGE) noted several media news stories reporting on allegations that the UThukela District Municipality in KwaZulu Natal had awarded study bursaries to 16 female students on condition that they underwent virginity testing (Ukuhlolwa) and remained virgins for the duration of their studies.

Based on these news media reports, the CGE felt that there was a *prima facie* case and therefore grounds for launching a formal investigation regarding possible violation of the constitutional rights of the girls concerned, including the right to gender equality. The CGE launched a formal investigation against the UThukela District Municipality invoking section 11 1 (e) of the CGE Act. (which gives the CGE powers to investigate on its own accord).

The Commission for Gender Equality is an independent institution established in terms of Section 181 of the *Constitution of the Republic of South Africa, Act 108 of 1996*. In terms of section 187(1) of the Constitution, the Commission is specifically mandated to:

1. Promote respect for gender equality and the protection, development and attainment of gender equality;
 - 1.1. Monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality;
 - 1.2. Assess the observance of gender equality.

2. THE COMPLAINT IN BRIEF

The CGE was made aware of allegations that the UThukela District Municipality had taken a decision to award bursaries for 16 female students to study at tertiary institutions on condition that they underwent virginity testing, and remained virgins for the duration of their studies. During this period the Mayor, Councillor Dudu Mazibuko, appeared in several media interviews during which she was quoted as stating that the objective of the decision was to encourage the “girls to keep themselves pure and inactive from sexual activity and focus on their studies”.

3. THE INVESTIGATION PROCESS AND OBJECTIVES

In terms of the Section 11(1)(e), of the Commission for Gender Equality Act 39 of 1996 as amended, the CGE has the power to carry out a formal investigation of this nature. The Commission therefore invoked this provision of the CGE Act to carry out this investigation, with the UThukela District Municipality as the Respondent.

The investigation process was carried out in strict observance of principles of natural justice, which demand that an opportunity be provided for the respondent to make a formal representation of their side in this matter. All available evidence, including the necessary formal documents and oral evidence and testimony, were called for as part of the process and all material witnesses were allowed an opportunity to present all relevant evidence to substantiate their case. An opportunity was also afforded to the affected students to submit oral or written testimony to the process, even though not all of the students participated.

In carrying out this investigation, the Commission was guided by and paid due regard to all the provisions of relevant domestic/national legal frameworks (including the Constitution), regional/SADC Protocols and Declarations as well as Global/International Instruments to which South Africa is signatory (Please see the investigation report for full details of the relevant national legal frameworks, as well as regional and international protocols, declarations and conventions). Particular attention was paid to provisions that prohibit or outlaw gender discrimination or unequal treatment of persons on the basis of gender or sexual orientation.

The objective of the CGE's investigation process was therefore to determine the constitutionality and legality of the decision of the UThukela District Municipality to use virginity testing as a selection criterion to award study bursaries to female students. The issue of ukuhlolwa or virginity testing itself was not the subject of this complaint and investigation. (Focus and parameters of the Investigation was therefore on awarding bursaries to virgins and issue of virginity testing is peripheral).

4. THE FINDINGS

After a thorough review, examination and analysis of all the evidence at the Commission's disposal, including oral, documented and written evidence submitted by the UThukela District

Municipality and some of the affected female students, the Commission's findings in brief are the following:

- While it welcomes and appreciates the initiative to encourage the girls to pursue their education, and the effort to dissuade them from engaging prematurely in sexual activities that could expose them to health risks such as HIV/AIDS infections and prevent them from pursuing their education, the Commission finds that the decision to issue study bursaries to female students based on their virginity is a discriminatory practice. It violates their Constitutional right to equality, dignity and privacy.
- Culture and cultural practice should not be used as a factor to exclude those who do not belong or subscribe to such practices from receiving or benefiting from services provided by the government.
- The Commission finds that the "Maiden Bursary" Scheme fails to take into account extrinsic factors (or circumstances beyond the control of the recipients), such as rape, that may lead to loss of virginity.
- The "Maiden Bursary" Scheme amounts to a gender discriminatory practice against the girls as it creates an additional burden on them to shoulder the responsibility of refraining from sexual activity, without imposing the same burden of responsibility on boys through a similar Bursary Scheme.
- The Commission finds that the decision to award the Bursary Scheme on condition of virginity is unreasonable, unfair and unlawful, and particularly in contravention of the Promotion of Administrative Justice Act (2000) which calls upon organs of state to take administrative action that is lawful, reasonable and procedurally fair.
- Finally, the CGE finds that the UThukela District Municipality has failed in its Constitutional obligation (Section 7 (2)) to respect, protect, promote and fulfil the rights set out in the Bill of Rights. (Section 151 (3) and Section 195 of the Constitution)

5. RECOMMENDATIONS

In light of these findings, the Commission recommends the following:

- The “Maiden Bursary” Scheme should be discontinued as a category of student Bursary allocations.
- The Students who were awarded the bursaries should retain their bursaries without virginity as a condition.
- The Council Resolution no. A28/11/15, which deals with the Maiden Bursary Scheme, should be rescinded or amended to comply with the recommendations of the Commission.
- A high-level meeting should be held between the Commission’s Chairperson and the Mayor of UThukela District Municipality, involving the South African Local Government Association (SALGA) and the KwaZulu-Natal Legislature, to ensure that the respondent spends funding on appropriate and lawful programmes that are in line with the principles and values of the Constitution.
- All local Councillors of the UThukela District Municipality should receive training on gender equality, including relevant domestic legislation, regional and international instruments to which South Africa is signatory to.
- It is recommended that the respondent provides annual feedback for a period of two years to the KwaZulu-Natal Provincial Legislature and the MEC for Cooperative Governance and Traditional Affairs on the Bursary Schemes provided to students, amendments to relevant policies and training for Councillors.
- The respondent is requested to report back in writing to the Commission on the implementation of these recommendations, within 60 days of the release of these findings and not later than 18th August 2016.



Commission for Gender Equality
A society free from gender oppression and inequality

Mandate

Section 187(1) of the Constitution of South Africa reads: “The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality.” The CGE is a catalyst for the attainment of gender equality. Section 187(2) grants the CGE “the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.”

Our Vision

A society free from gender oppression and all forms of inequality.

Our Mission

The Commission for Gender equality shall advance, promote and protect gender equality in South Africa. This is done through:

- Research
- public education
- policy development
- legislative initiatives
- effective monitoring and litigation.



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How to lodge a complaint?

Complaints can be sent by:

1. Letter to:

The Legal Department
Commission for Gender Equality
PO BOX 32175
BRAAMFONTEIN
2017

Fax Number 011 403 5609 (Legal)
Fax Number 011 403 7188 (general)

2. Email to: complaints@cge.org.za

3. Or call, + 27 11 403 7182 for a complaints form.

After a complainant's letter has been received, the CGE will investigate the complaint. It may not be something that CGE manages and will then need to be referred:

If the matter falls within the CGE mandate the following procedure will be followed:

- We will write to you or send you an email asking more questions.
- We will let you know what is happening to your complaint.
- We will try to sort out the problem by writing to the respondent.
- We will follow up on the reply
- We will then decide if conciliation is needed. This is when a meeting is organised with all the parties to try to sort it out informally.

Remember: The Commission does not provide legal representation or advocacy to any parties. The Commission for Gender Equality handles complaints as an impartial party to the complaint.

GAUTENG

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Facebook: Gender Commission of South Africa