

**SOUTH AFRICAN HUMAN RIGHTS COMMISSION  
(SAHRC) REPORT**

**REVIEW OF CHAPTER 9  
AND ASSOCIATED INSTITUTIONS**



**RESPONSE TO QUESTIONNAIRE**

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# ROLE AND FUNCTIONS OF INSTITUTIONS

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## Question 1

**How do you view your institution's constitutional / legal mandate? In other words provide a description of your understanding of your institution's constitutional / legal mandate.**

The Constitutional and legal mandate of the Commission is articulated in section 184 of the Constitution (Act 108/96) as well as in the provisions of the Promotion of Access to Information Act 2 of 2000 (PAIA) as well as the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA).

Section 184 provides as follows :-

*Functions of Human Rights Commission*

184. (1) *The Human Rights Commission must -*

- (a) promote respect for human rights and a culture of human rights;*
  - (b) promote the protection, development and attainment of human rights; and*
  - (c) monitor and assess the observance of human rights in the Republic.*
- (2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power to:*
- (a) to investigate and report on the observance of human rights;*
  - (b) to take steps to secure appropriate redress where human rights have been violated;*
  - (c) to carry out research; and*
  - (d) to educate*
- (3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.*
- (4) The Human Rights Commission has the additional powers and functions prescribed by national legislation.*

Section 83 of PAIA provides as follows:

83 (1) *The Human Rights Commission must –*

*(a) compile and make available a guide on how to use this Act as contemplated in section 10; and*  
*(b) submit reports to the National Assembly as contemplated in section 84.*

*(2) The Human Rights Commission must, to the extent that financial and other resources are available—*

*(a) develop and conduct educational programmes to advance the understanding of the public, in particular of disadvantaged communities, of this Act and of how to exercise the rights contemplated in this Act;*

*(b) encourage public and private bodies to participate in the development and conduct of programmes referred to in paragraph (a) and to undertake such programmes themselves; and*

*(c) promote timely and effective dissemination of accurate information by public bodies about their activities.*

*(3) The Human Rights Commission may—*

*(a) make recommendations for—*

*(i) the development, improvement, modernisation, reform or amendment of this Act or other legislation or common law having a bearing on access to information held by public and private bodies, respectively; and*

*(ii) procedures in terms of which public and private bodies make information electronically available;*

*(b) monitor the implementation of this Act;*

*(c) if reasonably possible, on request, assist any person wishing to exercise right contemplated in this Act;*

*(d) recommend to a public or private body that the body make such changes in the manner in which it administers this Act as the Commission considers advisable;*

*(e) train information officers of public bodies;*

*[Para (e) substituted by sec 45 of 42 of 2001 wef 7 December 2001.]*

*(f) consult with and receive reports from public and private bodies on the problems encountered in complying with this Act;*

*(g) obtain advice from, consult with, or receive and consider proposals or recommendations from, any public or private body, official of such a body or a member of the public in connection with the Commission's functions in terms of this Act;*

*(h) for the purposes of section 84(b)(x), request the Public Protector to submit to the Commission information with respect to-*

*(i) the number of complaints lodged with the Public Protector in respect of a right conferred or duty imposed by this Act;*

*(ii) the nature and outcome of those complaints; and*

*(iii) generally, inquire into any matter, including any legislation, the common law and any practice and procedure, connected with the objects of this Act.*

*(4) For the purpose of the annual report referred to in section 84 and if so requested by the Human Rights Commission, the head of a private body may furnish to that Commission information about requests for access to records of the body.*

*(5) If appropriate, and if financial and other resources are available, an official of a public body must afford the Human Rights Commission reasonable assistance for the effective performance of its functions in terms of this Act.*

PEPUDA in sections 25 and 28 provide as follows:

**Section 25: Duty of State to promote equality**

*25 (2) The South African Human Rights Commission and other relevant constitutional institutions may, in addition to any other obligation, in terms of the Constitution or any law, request any other component falling within the definition of the State or any person to supply information on any measures relating to the achievement of equality including, where appropriate, on legislative and executive action and compliance with legislation, codes of practice and programmes.*

***Section 28 Special measures to promote equality with regard to race, gender and disability***

*28 (2) The South African Human Rights Commission must, in its report referred to section 15 of the Human Rights Commission Act, 1994 (Act No 54 of 1994), include an assessment on the extent to which unfair discrimination on the grounds of race, gender and disability persists in the Republic, the effects thereof and recommendations on how best to address the problems.*

While the above provisions are relatively self explanatory, in the main they may be said to involve three (3) main functions –

- promoting human rights (this would include education, awareness, training and support);
- monitoring and evaluation (this would include mandatory reports required in terms of PAIA and PEPUDA as well as the Socio-Economic Rights Report); and
- protection (encompassing the investigation of complaints, litigation mediation and the provision of redress) .

The internal organisational structure of the South African Human Rights Commission (Commission / SAHRC) seeks to respond to this broad categorisation.

While the constitutional and legal mandate is clearly expressed, unpacking what an “institution supporting constitutional democracy” means requires some thought. For some it is essentially a watchdog role, monitoring and scrutinising what government does and at all times maintaining a healthy distance from government. For others including many in government it is a role that is located within an understanding of

the political, social and economic context, incorporating a watchdog role but also a supportive role working with government and civil society and interpreting the constitutional and legal mandate in a manner that is responsive to the social, political and economic reality.

It is the latter understanding, which has characterised how we have given effect to our mandate maintaining that while the independence of the Commission is a *sine qua non* to its effective functioning, it was not an independence so removed from reality that we exist in splendid isolation. At the same time those requiring the services and the support of the Commission have to enjoy confidence in its ability to discharge its mandate without fear, favour or prejudice. Maintaining this independence from both a strong and well-resourced State sector as well as a strong, diverse and vibrant civil society has proved to be a significant challenge in the context of interpreting and operationalising the constitutional and legal mandate. The Commission has accordingly undertaken joint initiatives with both government and civil society in fulfilment of its mandate. It has also ensured the protection of its capacity to be critical of government while guarding against the risk of its focus and mandate being unduly influenced by civil society.

In this regard the decision of the Commission to substantially direct its work within a dual focus on equality and socio-economic rights (the eradication of poverty) must accordingly be understood in the context of the current South African reality.

## **Question 2**

**What role or function does your institution perform that is not carried out by other institutions, whether in government or civil society?**

In general the various activities involved in promoting, monitoring and protecting human rights is one that is carried out by a number of agencies including organs of civil society. In the same breath government has an ongoing commitment to ensure that it complies with the human rights imperatives of the Constitution. Many

government departments have established dedicated units or capacity within their structures to give effect to this.

However, moving from the general to the specific, the Commission performs functions that are not undertaken by civil society or government and they include:-

- a. The socio-economic rights mandate contained in section 184(3) of the Constitution. This provision of the Constitution sets out the role of the Commission requiring it to request reports from organs of State on the measures they have taken to progressively realise socio-economic rights and to report on such measures. This is a task entrusted only to the Commission.
- b. The specific tasks required of the Commission in terms of the provisions of PAIA including its reporting obligation to Parliament.
- c. The specific tasks required of the Commission in terms of PEPUDA including its reporting obligation to Parliament.

### **Question 3**

**In what way, if any, does the role and function of your institution overlap or potentially overlap with other chapter 9 institutions?**

The mandate of the Commission is very wide and on the face of it encompasses what is ordinarily the mandate of other Chapter 9 institutions. While through voluntary processes we have effected a division of labour in respect of gender matters (with the Commission on Gender Equality), language rights (Pan South African Language Board, PANSALB), religion, culture and language (CRL Rights Commission), police misconduct (the Independent Complaints Directorate) and prison matters (Judicial Inspectorate), there is in law nothing in the constitutional and legal mandate prohibiting the Commission from dealing with any of these matters. It, however, retains a residual capacity to do so and has from time to time intervened accordingly.

At other levels the overlap is more obvious – in respect of the promotional mandate most Chapter 9 institutions have this as part of their mandate and it is impossible to promote rights from a sectoral perspective. When the Commission embarks on promotional work it does so in respect of all the rights and the other Chapter 9 institutions probably function on the same basis.

At other levels the overlap may encourage forum shopping as a single set of facts may activate the mandate of a number of institutions. By way of example a TshiVenda speaking woman who is unlawfully refused a social assistance grant may approach any of the following institutions:-

- The SAHRC: a violation of her right to social security.
- The Public Protector: an act of maladministration.
- The CGE: if she alleges the refusal was on account of her gender.
- The CRL Rights Commission: if she alleges the refusal was on account of her being a TshiVenda.

#### **Question 4**

**What outcomes do you strive for in order to realise the constitutional/legal mandate set out in 1 above?**

The outcomes seek to be consistent with the main pillars of the constitutional and legal mandate and they include :-

- A general awareness by citizens, government and institutions of their human rights and responsibilities and in appropriate instances the alignment of policies and programmes with human rights imperatives.
- The production of credible and reliable reports to Parliament in respect of PAIA, PEPUDA and Socio-Economic Rights.
- The capacity to effectively receive and resolve complaints successfully either through mediation or litigation.
- A residual capacity to monitor human rights on an ongoing basis and make appropriate and relevant interventions.
- To be the main focal point for human rights discourse as well as the central human rights resource in the country.

- A coherent and effective organisational structure and team.

To be an effective institution for the promotion and protection of human rights the Commission will pursue the following primary objectives:

- To promote human rights and contribute to developing a sustainable culture of human rights through education and training, community outreach and public awareness campaigns;
- To monitor human rights by providing comprehensive research and documentation mechanisms designed to advance and assess human rights, especially social and economic rights;
- To protect human rights by investigating individual and systemic complaints of human rights violations and provide appropriate redress;
- To entrench the Commission as the major resource and primary focal point for human rights promotion, protection and monitoring in the country;
- To be accessible and work in a collaborative manner with organs of State, Civil Society and other Chapter 9 organisations;
- To advance the public and parliamentary accountability of the Commission's work and maximise the utilisation of public resources through sound strategic management and efficient financial and administrative systems and procedures; and
- To publicise and convey the role and work of the Commission to the general public via an integrated internal and external communications strategy.

#### **Question 5**

**Does the empowering legislation governing your institution provide a clear workable, and comprehensive legal framework that supports and empowers the institutions to successfully fulfil its core mandate?**

The three empowering pieces of legislation for the Commission, the South African Human Rights Commission Act 54 of 1994, PAIA and PEPUDA do provide the Commission with the requisite framework.

One challenge is that some provisions pertaining to the Commission's legal framework have not been brought into operation. For example, section 28 of PEPUDA (Special measures to promote equality with regard to race, gender and disability) has not been brought into operation since the statute was enacted in February 2000. This undermines the good intentions behind the statute and frustrates the expected role of the Commission.

The South African Human Rights Commission Act was drafted when the 1994 Interim Constitution was in effect. There are a number of provisions in the Act that refer either directly or indirectly to the Interim Constitution. This has resulted in a number of inconsistencies between the Act and the Final constitution. Since the interim constitution has been repealed not much has been done to bring the Act in line with the final constitution. In addition, the Regulations to the Act are now completely outdated to the extent that they are not currently being used in their entirety. The Commission has been attempting without success for a number of years to have the regulations pertaining to the Act revised.

There has been a view in some quarters that the Act should be amended in order to give the Commission more teeth. For example, it could be given the power to make binding decisions. Currently, the Commission can only make recommendations. This view, however, does not find much support in the Commission, save for a possible amendment as suggested by the current Chairperson of the Commission that any one affected by the recommendations of the Commission, especially public bodies, should within a given period of time respond to the Commission in writing as to the response to the recommendations in question.

The criticism against the PAIA is that the 30-day period between an unsuccessful appeal and recourse to the courts make it difficult for ordinary people to seek the Commission's intervention as failure to approach the court within the stated period closes the option of litigation on the matter, save where the court condones such a delay. As a result of this, there litigation rate of the Commission in PAIA matters is very limited if non-existent

The Executive Branch of Government and the National Assembly have not adhered to the funding arrangements for the Commission provided for in section 85 of PAIA (Section 85 reads: “Any expenditure in connection with the performance of the Human Rights Commission’s functions in terms of this Act must be defrayed from moneys appropriated by parliament to that Commission for that purpose) .

Finally, the Public Finance Management Act (PFMA), while a very important piece of legislation, has a negative impact on the internal arrangements in the Commission. This is in regard to the provisions pertaining to the powers and roles of the executive authority and the accounting officer in the Commission. PFMA does not provide for the Chairperson of the Commission as the executive authority while the Treasury Regulations pertaining to PFMA so provides. The other problem in this regard is that decision-making amongst Commissioners is majority based while the PFMA could give greater powers to the Chairperson as a possible executive authority-clarify and possible amendment in either the South African Human Rights Commission Act or PFMA might be necessary.

#### **Question 6**

**What mechanisms do you have in place to measure the outcomes set out in 4 above and how do you assess the effectiveness and impact of you work?**

As required by national treasury guidelines, the SAHRC has, since its inception, always ensured that a strategic business plan is in place. Through the strategic plan we seek to calibrate our work with national imperatives and at the same time, respond to local needs and challenges within the context of an increasingly globalised world. The SAHRC has configured its policies and designed its operations on the basis of the Constitution, the founding act and national, regional and international legislative and normative frameworks that give meaning to human rights. These imperatives are coalesced into a Strategic Business Plan with measurable objectives and service delivery indicators.

The Strategic Business Plan guides the Commission towards achieving its mandate and at the same time serves as an important tool for measuring our performance as an organisation accountable to the people of South Africa.

The Strategic Business Plan takes the constitutional mandate of the Commission as its starting point and translates these imperatives into strategic objectives and operational outputs. The SAHRC processes a wide range of policy pronouncements from the legislature and the executive and considers the internal and external environment as the basis on which to design the modalities of its delivery.

Directed by the Public Finance Management Act 1 of 1999 (PFMA) and the relevant National Treasury guidelines, the Commission's Strategic Plan puts forward a model for the efficient use of resources in pursuance of its mandate. The Strategic Plan is thus the ultimate framework that guides the operations of the Commission and it provides an institutional accountability, risk and performance management mechanism. It reflects restructuring processes, cost saving initiatives and innovative strategies for improved protection, promotion and monitoring of human rights in the country. This Strategic Plan is at the heart of our endeavours to build an organisation that is people and staff oriented; effective and efficient; and committed to fostering strategic partnerships in fulfilling its constitutional mandate.

The outcomes referred to in question 4 are derived from our constitutional mandate and translated into measurable strategic objectives, activities, key performance indicators and targets. These targets are scrutinised within the following processes:

- Weekly progress reports of executive management.
- Fortnightly reports to Commissioners from CEO.
- Fortnightly operations meetings.
- Monthly reporting.
- Quarterly reporting in plenary.
- Annual reporting.

The SAHRC employs a number of mechanisms to assess the effectiveness of its programmes:

- Output assessment: A well-established system of tracing the outputs within the various programmes is in place and programme heads report against the stated outputs in the strategic plan.
- Qualitative feedback: Programme implementation is accompanied by customer/beneficiary satisfaction questionnaires from which evaluative and assessment analyses are drawn.
- The SAHRC has embedded quantitative systems that assess the statistical trends and patterns of workshops and complaints from which we deduce certain working assumptions about our work and our operational environment.
- The quality, utility, propriety and accuracy of our work are guided by systems and procedures that are now being translated into norms and standards handbooks for all programmes.
- The efficiency standards and mechanisms to determine the worth of our practices are fairly well developed. However, we do find it difficult to assess the impact of our work in general not because we are unable to do so, but because of broader methodological challenges in the field. The nascent tools that are in place include:
  - Feedback from beneficiaries/ stakeholders.
  - Trends in complaints processes and themes.
  - Deductions from workshops and conferences.
  - Level of public confidence through the nature of requests for support received.

### **Question 7**

**Have you carried out an evaluation looking at the success or otherwise of your functions, especially in relation to recommendations sent to government, parliament or other public institutions?**

There are examples of both formal and informal monitoring of the Commissions' recommendations. The types of monitoring are dependant on the nature of the recommendations that have been made.

For example, in the area of public inquiries there have been formal follow-ups on the recommendations that were made. The most extensive follow up was on the recommendations to the *Final Report of the Inquiry into Human Rights Violations in Farming Communities, 2003*. Here, the Commission employed a person for a year who was specifically dedicated to monitoring and follow up. This included taking action on every recommendation that was made. The follow up was by way of letters and meetings that were set up between the Commission and various government departments and bodies. A final evaluation report on this follow up was produced internally within the Commission.

The annual Economic and Social Rights reports (ESR Reports) of the Commission by their very nature follow up each year on the recommendations that were made in the previous year to government.

Submissions to Parliament on legislation are assessed in terms of whether the recommendations contained therein were adopted into the final drafting process.

There are no specific formal mechanisms in place to measure the success or otherwise of our recommendations that are sent to government, Parliament or other public institutions. This is an issue for which the Commission has had times been criticised. However, it should be noted that the issue is a matter of considerable debate within the Commission. Over time the Commission is improving this area of monitoring.

The reports of the Commission continue to have a considerable impact in the policies and practices of organs of state and private organisations. For example, the following reports resulted either in reviews of policies and regulations or provided impetus for agencies to act on their responsibilities:

- *Report into Initiation Practices at Educational Institutions and a Preliminary report on Cultural Initiations*, 2001
- *Report on the Inquiry into Human Rights violations in the Khomani San Community*, 2004
- *Report on Open Hearings on Xenophobia and problems related to it*, 2004
- *Report on the Public Inquiry into Exclusionary Policies*, 2005
- *Report on the Public Hearing on the Right to Basic Education*, 2006

#### **Question 8**

**What have been/ are the major constraints facing your institutions and how have these impacted on its ability to achieve its mandate?**

The Commission has a broad mandate in relation to the financial resources it receives. Many demands and expectations are placed on the Commission and it is not always possible to attend to all of these. Also, the Commission does not always have the time or resources to do the type of in-depth follow up and adequate monitoring of its work that it would ideally like to. The Commission sometimes takes on more than it is capable of delivering on.

There is currently a lacunae in the constitutional and legislative provisions as to what constitutes a full complement of Commissioners. The Constitution does not provide for the number of Commissioners to be appointed and the SAHRC Act provides that not less than five members are appointed on a full time basis. The Act does not provide for the number of Commissioners that would constitute a full complement. It was the Interim Constitution that provided for the appointment for 11 Commissioners.

The inconsistencies in the number of Commissioners of Chapter 9 institutions and in the appointment of chairs and deputy chairs are a concern that has to be addressed.

The litigation capacity of the Commission, in terms of numbers and ability, on human rights issues has been a constraint as far as the realisation of the constitutional mandate of the Commission is concerned.

The division of roles and responsibilities between the Office of the CEO and the Commissioners has not always been clear and this has impacted on the operational efficiency of the organisation. Previously, the mandates and lines of accountability, though outlined, were not respected. This led to the Commissioners and the Secretariat not working as closely as they are supposed to. The appointment of the new CEO changed the direction this was taking and helped rebuild relations between the Commission and the Secretariat. Internal restructuring of the Commission remains a priority to address the operational efficiency of the institution. In addition the complaints handling procedure remains a challenge. The Commission is currently reviewing the complaints handling procedure in order to clarify the roles of different role-players within the Commission. During its last plenary in January 2006, the Commission outlined the mandates of Commissioners and the CEO as follows:

### **Commissioners**

The Commissioners provide the political leadership of the Commission. They are the primary decision makers and are collectively responsible to provide effective corporate governance. The roles of Commissioners should be according to the King Report on Corporate Governance for South Africa (2002). Commissioners play a central role in the strategic vision and policy direction of the Commission. Their roles in this regard should be clarified and focused. The working relationship between Commissioners and between Commissioners and staff needs to be clearer and more effective. The work of Commissioners needs to be linked with quantifiable outputs. The Secretariat must support Commissioners more appropriately

### **The Chief Executive Officer**

The CEO is appointed by Commissioners to implement the mandate of the Commission. The CEO is empowered to appoint staff members and is accountable to the Commissioners in this regard. The CEO is also responsible for the management of the finances. The role/functions of the CEO should be as outlined in the King Report on Corporate Governance for South Africa (2002). Many of the challenges for the CEO lie in how he relates to the Commissioners and Staff members.

The lack of an effective communication policy about the work of the Commission on dissemination of reports or publications undermines the credibility of the Commission. Lack of resources has led to the Commission not disseminating all its work, alternatively only publishing limited quantities of its work. The Commission has recognised the need to become more creative and to publish executive summaries. The Commission is also sensitive to the fact that it does not publish enough of its work in all of the official languages of the country. A communications strategy and policy are in the process of being drafted.

For many years the Commission adopted the approach that work concerning vulnerable groups should be mainstreamed into all the departments and areas of work within the Commission. However, it finally became apparent that there are weaknesses in such an approach and that there is a need for a more dedicated centralised co-ordinating function that will mainstream this work and ensure that all vulnerable groups receive the appropriate attention. This challenge has been addressed during the current financial year (2006/07) with the appointment of four co-ordinators at deputy-director level and based within the office of the CEO to do concentrated work on the following vulnerable groups: children and persons with disabilities; persons living with and affected by HIV/AIDS; Older Persons; and Non-Nationals. The Commission has been criticised by civil society for placing children and persons with disability under one umbrella on the basis that the portfolio is too large.

The Commission is currently in the process of appointing a civil and political rights co-ordinator. This co-ordinator will, amongst other things, ensure that the

Commission works closely with both Government and Civil Society on these rights to ensure observance of these rights.

The Commission must address poverty through its work and pay the necessary attention to its economic and social rights mandate. Extreme poverty remains the most severe challenge to the enjoyment of economic and social rights. In response thereto, the Commission seeks to prioritise its work regarding poverty and inequality. Marginalised individuals, groups and communities are the focus of the Commission to ensure that the Commission is accessible to these communities. For example, the Commission's education and training efforts during this financial year were targeted at many rural and poor communities. Also, the Commission is currently revising its ESR monitoring tools to ensure that they are relevant to the challenges currently facing this country.

South Africa is regarded as a leader on the African continent and this places demands on the Commission in terms of its links with regional and international organisations and national institutions. International requests on human rights issues far exceed the carrying capacity of the Commission.

The Commission has actively been involved in creating links with regional and international human rights bodies and remains active in building regional instruments and bodies in order to promote the end to violence and human rights violations on the African continent. This is done to also ensure that the Commission remains contextually relevant through its partnerships nationally, regionally and internationally by responding to new or current legislative environments.

The Commission intends producing a human rights barometer in the form of a Human Rights Journal and an annual Human Rights Development Report on key developments in the human rights environment. This will contribute to placing key human rights challenges in the public mind. It is planned to launch both publications at the end of March 2007.

## **B. RELATIONSHIP WITH OTHER BODIES**

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### **Question 9**

**How do you view your institutions relationship with the executive and Parliament, given its constitutionally guaranteed independence and impartiality and the constitutional requirement to be accountable to the national Assembly?**

**In particular, please address the following issues:**

- a. What legal and other mechanism are in place to ensure and strengthen your institutions independence:**

At an international level, there are the United Nations and the Paris Principles (Principles relating to the status and functioning of national institutions for protection and promotion of human rights, in particular part B: Composition and guarantees of independence and pluralism).

The Constitution of the Republic of South Africa Act 108 of 1996, in particular Section 181 (2) states that *[t]hese institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.*

*(3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.*

*(4) No person or organ of state may interfere with the functioning of these institutions.*

There was talk of having Memorandum of understanding between the Commission and other stakeholders to serve at the executive branch of the government that could assist the commission in giving greater effect to the work of the Commission.

The Human Rights Commission Act 54 of 1994, in particular *section 4 (1)*: *A member of the Commission or a member of the staff of the Commission shall serve impartially and independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.*

*3) All organs of state shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.*

**b. What mechanism are in place to facilitate reporting to (and being accountable to) the National Assembly;**

The Constitution requires that the Commission must report on its activities and the performance of its functions to the National Assembly at least once year (section 184(5)). The Commission appears before the Justice and Constitutional Development Portfolio Committee in the National Assembly each year and engages on its Annual Report.

Section 15(2) of the SAHRC Act is the enabling provision in terms of law that allows the Commission to table reports in compliance with Rule 302 of the National Assembly. The section reads as follows:

*‘In addition to the report contemplated in section 118 of the Constitution, the Commission shall submit to the President and Parliament quarterly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it during that quarter: Provided that the Commission may, at any time, submit a report to the President and Parliament if it deems it necessary’.*

**c. How do you view your relationship with the executive and under what circumstances do you engage the executive**

The Commission may approach President or Parliament in terms of section 6 of the SAHRC Act, which states that the Commission may, at any time, approach either the President or Parliament with regard to any matter relating to the exercising of its powers or the performance of its duties and functions.

The relationship between the Commission and the Executive is issue driven and varies within the executive branch of government. At a political level, there is an appreciation of the Commission and its work, though this does not always reflect on how government departments and officials relate to the Commission in terms of assisting the Commission in its work and providing and complying with requests for such assistance. This is more visible when the Commission requests documents such as under PAIA and in complaints handling processes. It is not clear whether public servants appreciate the constitutional obligation for organs of state to “assist and protect the [Commission in order] to ensure [its] independence, impartiality, dignity and effectiveness.”

**Question 10**

**Is Parliament currently effectively fulfilling its oversight role over your institutions? If not how can this be improved?**

This question must be placed within the context of the following general observations about Parliament:

- Parliamentary committees appear to have full programmes and are very busy
- Parliamentary committees appear to have little research capacity and administrative support.

This results in:

- A lack of regular ongoing interactions between the Commission and Parliamentary committees

- Often, when such interactions do occur, not all committee members are present at the meeting
- There are delays in the committees looking at the reports that have been tabled in Parliament by the Commission (in some instances these delays have been in excess of a year e.g. ESR Report).
- The experience of the Commission from trying to actively engage with the committee's section of Parliament is that it is difficult to co-ordinate meetings with more than one committee at a time (where this is necessary because a report, for example, intersects the work of more than one committee).
- At the meetings with committees the impression is sometimes created that not all committee members have read the report that is before them. This inhibits substantive in-depth engagement and discussion on the issues raised in the report.
- The length of time set aside for engagement between a committee and the Commission on a report is usually between two (2) and four (4) hours. This is a short amount of time to engage on a lengthy or substantive report. When the Annual Report is tabled and discussed with the Justice and Constitutional Development Portfolio Committee, the Committee invites the SAHRC, the Public Protector and the Commission on Gender Equality to a 4-hour meeting.
- Due to a number of combined factors listed above, engagement with committees can sometimes be more of an informative nature than an oversight nature. The discussion sometimes tends to be broad rather than focused on the report before the committee.
- Invitations from Parliamentary committees can sometimes be at very short notice (a week or less). It is difficult from a logistical point to comply with these requests as they involve following the necessary internal PFMA compliant requisition procedures to book air flights for Commissioners and staff from Johannesburg to Cape Town.
- The length in delay of an invitation to address a committee on a particular report has sometimes resulted in a situation where the person who wrote the report and would be considered to be the expert and most suitable person to brief the committee having left the Commission.

In terms of improvements, suggestions are as follows:

- There is a need for a formalised interaction between the speaker's office, the committee's section and the Parliamentary unit of the SAHRC to coordinate and arrange for the briefings by the SAHRC. Some briefings take place on an annual basis and are known at the beginning of the Parliamentary year. Dates could be arranged well in advance in order that there can be better planning.
- More time should be given for the consideration of Annual Reports. The nature of the reporting format in terms of PFMA is quantifiable rather than qualitative and does not provide opportunity for the Commission to showcase examples of its work.

Should the model of an oversight committee for chapter 9s be established then the following needs to be taken into account:

Some of the reports tabled in Parliament are topic specific and it is desirable that the relevant committees in the National Assembly and the NCOP examine them. This could be achieved by inviting members of these specific committees to the relevant meetings to participate in the consideration of a report. However, it needs to be assessed whether this is practicable given the busy schedules of many committees.

More specific comments on Parliaments oversight role are as follows:

### ***Justice and Constitutional Development Portfolio Committee***

The Justice and Constitutional Portfolio Committee, through which the Commission's accountability to the National Assembly is effected, is not that effective for many reasons:

1. The time given to the Commission by this committee is not adequate and lately, the Commission appears before this committee almost towards the end of the next financial year, rendering any recommendations the committee might make largely irrelevant or outdated.
2. The attendance of MPs in the committee is not generally satisfactory and, with the exception of a few MPs, there appears to be an inadequate understanding of the actual working the Commission is doing and the challenges therein.

3. Issues/concerns raised by the Commission on PAIA and PEPUDA for example, are not followed up and there is hardly any feedback
4. There appears to be no clear procedure for holding Commissioners accountable in their individual/collective capacity.

### ***Other National Assembly Committees***

The appearance of the Commission before other relevant committees is haphazard to say the least and uncoordinated. This is rather unfortunate as the work and inputs of the Commission could help relevant committees of the National Assembly to be more effective in their oversight responsibilities in relation to the executive branch of government.

### ***National Assembly***

The National Assembly does not appear to engage the Commission's reports at all and it is not even clear if there is any meaningful report or discussion of the Justice and Constitutional Development Portfolio Committee's report by the National Assembly. There also appears to be a general insufficient understanding/appreciation of the role and independence of the Commission by some MPs. The handling of questions put to the Commission by MPs in the National Assembly is problematic as sometimes these questions come via the Ministry of Justice and Constitutional Development instead of coming directly to the Commission through the Speaker's office.

There might be a need to establish a special committee of the National Assembly through which the National Assembly could effectively fulfil its oversight role over the Commission. This committee could be comprised of the relevant heads of the chairs of the various portfolio committees of the National Assembly with a representative from each opposition party in the National Assembly. This committee should look at the role of all Chapter 9 institutions, their Commissioners and their role as a whole in relation to their mandates.

### ***NCOP***

In terms of the Constitution and the South African Human Rights Commission, the Commission has to report to the National Assembly and does not have a legal basis to be accountable to the NCOP. However, the Commission does send some reports to the

NCOP and sometimes appear before its committees. This situation needs to be clarified or be understood.

### *Legislation Monitoring*

The relationship in terms of legislation monitoring is generally satisfactory. However, access to Parliament is not satisfactory, members of the Commission are treated like ordinary members of the public when it comes to access to the premises. There is a need for suitable identification cards.

#### **Question 11**

**What was the intended relationship of accountability between your institution and other institutions supporting constitutional democracy and the different branches of government? To what extent have these relationships been realised?<sup>1</sup>**

*NB: The information in this section is an adaptation of two review papers on the work of the SAHRC. The first is Rachel Murray, *Lessons from the South African Human Rights Commission: An Examination of a National Human Rights Institution*” and the second is by N Barney Pitso, “ *National Institutions at Work: The case of the South African Human Rights Commission,**

#### **Relationship with government**

Section 182 of the Constitution provides for the independence of all Chapter 9 institutions and there is a corresponding duty under section 181 (3) on the other state organs to ‘ensure the independence, impartiality, dignity and effectiveness of these institutions’.

Further under section 4 of the SAHRC Act, the government is obliged to give the Commission ‘such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission’. In addition, the state is prohibited from ‘interfering with, hindering or obstructing the Commission ... in the exercise of or performance of its, powers, duties and functions (section 4(2)). The Commission is protected from the Executive in that its proceedings are public and the rules of contempt of court apply in relation to the maintenance of orderly behaviour,

the authority of the Commission, defamation and protection of acts done by the Commissioners in the course of their duties.

At the same time, the Commission has the power to subpoena witnesses, take out search warrants and hear evidence in the course of its investigations into human rights violations. In all these activities, the Commission must rely on the co-operation and assistance of organs of state including police, officers of the courts, civil servants and cabinet ministers.

The Commission deals with government on the basis of partnership and co-operation. For example, the Commission provides education and training interventions to government officials to assist them in building their human rights capacity. In addition, the PAIA Unit, for example, supports the Information Officers in government by training them on the Act so that they are able to meet their obligations. Such activities require co-operation, rather than competition between the Commission and the various stakeholders in government. The Commission has also partnered with government on specific activities such as the drafting of South Africa's first National Action Plan for the Promotion and Protection of Human Rights (NAP). A Steering Committee as well as a Co-ordinating Committee comprised of stakeholders from both government, civil society and the Commission were set up to assist in the drawing of the Action Plan.

Government is generally supportive of the Commission. However, this relationship could be enhanced, especially in relation to recommendations that the Commission makes to government. Many times, government officials do not consider some of the recommendations made by the Commission in relation to human rights violations.

### **Relationship with Parliament**

The Commission is accountable to Parliament, which is required to consider overall accountability of organs under section 55 (2) of the Constitution. The Commission itself is an oversight body over acts of government and provides information to Parliament to enable it to undertake the same function. As a Report of the Parliamentary Oversight and Accountability found that with regard to these Chapter 9 institutions:

‘in relation to Parliament, they have two roles. Firstly they should be seen as complementary to Parliament’s oversight functions: together with Parliament they act as watchdog bodies over the government and organs of the state. Secondly, they support and aid Parliament in its oversight functions by providing it with information that is not derived from the executive. One of the constitutional functions of Parliament is to be an oversight body to provide a check on the arbitrary use of power by the Executive...Thus Parliament’s oversight functions can be enhanced by ensuring the effective functioning of state institutions supporting constitutional democracy.’<sup>1</sup>

There are a number of ways in which the Commission interacts with Parliament. The SAHRC is required to report to Parliament (Portfolio Committee on Justice and Constitutional Development) under Section 181 (5) of the Constitution. Parliament also has a role to play in terms of the appointment of Commissioners. Given that Parliament is the only body to which the Commission is accountable, its role is essential. To strengthen its relationship with Parliament, the Commission established a Parliamentary Unit, which is responsible for Parliamentary liaison and legislation monitoring.

### **Relationship with other constitutional bodies**

The SAHRC is aware of the overlap in its mandate with the mandates of other Chapter 9 institutions. The broad mandate and variety of human rights over which the SAHRC has jurisdiction means that in theory, it could take any case and therefore it makes sense to use other bodies. For example, recently the SAHRC collaborated with the CRL Rights Commission to host public hearings on Initiation schools, an initiative where the mandates of the two Commissions clearly overlapped. In such instances, the SAHRC prefers to collaborate rather than to compete over overlapping mandates.

The SAHRC also has a complaints referral system whereby it refers cases to other institutions and bodies that are more appropriately placed to deal with the matter.

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<sup>1</sup> H Corder, S Jagwath and F Soltau, “Report on Parliamentary Oversight and Accountability, 1999, p 56, in Rachel Murray

In addition the SAHRC interacts with other constitutional bodies through workshops, seminars, conferences, etc.

**Question 12**

**Does your institution have any official or informal relationship with other Chapter 9 institutions or institutions of a similar nature? If yes, describe the nature of this relationship and the outcomes envisaged and generated by this relationship.**

***Head of Chapter 9 Forum***

The heads of Chapter 9 institutions (SAHRC, CRL Rights Commission, IEC, Public Protector and CGE) meet on a quarterly basis to look at their various activities, discuss political issues that affect them; conditions of service and the co-ordination of joint events.

***Relationship with Commission for Gender Equality (CGE)***

The Commission has a formal working relationship with the CGE in relation to cases/complaints handling by the legal departments of both institutions. In essence it is about the kind of cases/complaints, which we may handle jointly. Particular focus is on matters that will be litigated especially in instances where the outcome of a matter may result in important legislative or policy changes. There is a need for this litigation relationship between the two institutions, as the CGE does not have any litigation powers, save for provisions of PEPUDA.

Secondly, where a case/complaint has elements of both gender violation and any other human rights violation each institution would advise the other and seek joint initiative(s) to address the violation.

***Public Protector***

The Commission has jointly hosted representatives of other human rights institutions outside South Africa who have been visiting the country.

There is no formal working relationship, however, both institutions have referred complaints to each other if a matter has been incorrectly directed to one by a member of the public. Similarly each institution has handled/investigated complaints against each other that have been lodged by members of the public.

### ***Judicial Inspectorate***

The Commission has a good working formal relationship with this institution. Because of the nature of our work and due to a large number of complaints we receive from prisoners and which relate to prison conditions, an agreement has been concluded with the Judicial Inspectorate's office wherein we are able to log into their complaints handling system, and electronically register a complaint whilst simultaneously getting a reference number. This meant that the Judicial Inspectorate's office had to give us their pin code in order to access their programme and through this system we have tremendously reduced the volumes of paper work and time wasting in writing referrals letters. Through this system we are also able to continuously check progress on any matter that has been so referred.

### ***Provinces***

In the various provincial offices there are a host of formal and informal relationships that exist between the various provincial Chapter 9s, examples include:

- Organising joint outreach and public awareness sessions.
- Arranging joint celebrations and events on calendar days.
- Making inputs at each other's workshops.
- Inviting the other chapter 9s to the Commission's activities.
- Assisting on interview panels for new staff members.
- Regular meetings to discuss matters that have been cross-referred.
- Using office space when one Chapter 9 visits a city where it does not have an office.
- General liaison on the work of the respective Commissions.

**Question 13**

**What is the extent of collaboration and co-ordination of the work carried out by your institution and similar/related work carried out by other Chapter 9 institutions or institutions of a similar nature? Give examples of successful**

The collaboration with CGE is mainly on litigation strategies and referral of cases. Bi-weekly meetings are held to discuss such cases and to identify new areas of joint interventions e.g. entry points in *amicus* applications and, where appropriate, sharing statistics and research findings.

With regards to joint public hearings members (usually a Commissioner) of both institutions preside over these hearings. Arrangements to jointly share costs always precede any initiative. In the end a joint comprehensive report with findings and recommendations is published.

Joint commemoration of human rights day(s) is usually befitting both the CGE and the SAHRC. Both institutions would agree on an identified topic or theme and the community to be targeted wherein staff and Commissioners of the two institutions would stage an event. An example is Vryburg where these institutions targeted school children to debate issues of racism and gave out some prizes. Commission staff regularly sit on interview panels for staff at other chapter 9s.

***Public hearings and inquiries***

The Commission has recently conducted and held public hearings on initiation schools. The Commission conducted these hearings jointly with the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission) and the National House of Traditional Leaders (NHTL). The hearings were held in four provinces; Eastern Cape, Free State, North West and Gauteng. A joint report containing findings and recommendations will be published.

In the Komani San Public Inquiry, a Commissioner from the CRL Rights Commission sat on the panel at the public hearing. Commissioners and staff from the SAHRC sat as panellists at the CGE's 2006 public hearings on the Sexual Offences Bill.

## C. INSTITUTIONAL GOVERNANCE

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### Question 14

**What are the institutional arrangements in your institution? Are these arrangements set out clearly and do they allow for a smooth running of the institution? Is there a clear, logical and workable division between the members of your institution appointed by the President on advice of the National Assembly and the secretariat? What suggestions do you have to improve the institutional governance arrangements?**

The Commission is largely made of two components: the Commissioners as a collective and led by the Chairperson and the Deputy Chairperson and, the Secretariat led by the Chief Executive Officer.

#### *Commissioners*

Commissioners appoint the Chairperson and Deputy Chairperson, who are both Commissioners. Other than chairing meetings of the Commission, the SAHRC Act and the Constitution do not specify any distinct role for the Chairperson and the Deputy Chairperson. The Chairperson or the Deputy Chairperson do not, therefore, have any other specific power over Commissioners in their individual capacity and as a collective. Only the National Assembly can remove Commissioners from office and decision making in the Commission amongst Commissioners is by simple majority.

However, Commissioners have through the current investigation procedures, assigned the powers to the Chairperson to hear appeals on decisions made by the Secretariat on the processing of complaints and to chair or assign a chair to a public hearing conducted by the Commission. The Chairperson is also the chief spokesperson of the Commission.

The smooth running of the institution in relation to the Commissioners and the current set up depends on the integrity and goodwill of Commissioners. The set up will not

deal effectively with a Commissioner who does not conduct himself or herself appropriately but not to the extent of being impeached. The Chairperson, other than a moral sanction, cannot discipline a Commissioner who, for example, comes late to work or does not do sufficient work for the Commission.

Notwithstanding the above, principles of co-operative government and intergovernmental relation in section 41 of the Constitution are applicable to the Commission as an organ of state and should inform the conduct of Commissioners in the Commission. In this regard, section 41(1) (c) requires an organ of state to ‘provide effective, transparent, accountable and coherent government for the Republic as a whole’.

The conduct of Commissioners is also informed by their powers, duties and functions as provided for by sections 7, 12, 16 and 19 of the SAHRC Act. These include:

- (a) development and conducting of information programmes
- (b) maintaining close liaison with institutions, bodies, etc
- (c) considering recommendations, suggestions and requests concerning fundamental human rights
- (d) bringing proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons<sup>2</sup>
- (e) Holding of meetings of the Commission, procedure, quorum and decision-making. Section 12(3) makes it clear what constitute a quorum (a majority of the total number of Commissioners) and section 12(4) provides when a decision of a meeting becomes a decision of the Commission and when the chair of a meeting can exercise two votes.
- (f) Submitting Annual Reports to the President in terms of section 15 based on section 118 of the 1993 Constitution. This, however, is clearly unconstitutional in terms of section 181 of the 1996 Constitution. The Commission is no longer

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<sup>2</sup> However, how these powers, duties and functions are exercised by Commissioners in the context of the relationships with the Secretariat is important and certainly does affect the relationship between these two important components of the Commission. The exercise of these powers must promote transparency, accountability and effective governance of the Commission as required by section 1 of the 1996 Constitution and section 9 (e) of the Promotion of Access to Information Act N0 2 of 2000. In addition to this, section 237 of the 1996 Constitution also makes it very clear that ‘all constitutional obligations must be performed diligently and without delay.’

required to submit any report to the President except out of courtesy. The issue of who prepares and submit reports has also been changed to some extent by the PFMA.

- (g) The appointment of the Chief Executive Officer in terms of section 16. The functions of the CEO shall include the following: (a) the appointment of staff ‘reasonably necessary to assist him or her with the work incidental to the performance by the Commission of its functions’; (b) management of and administrative control over staff and be accountable to the Commissioners in this regard; (c) subject to the Exchequer Act (now PFMA), be responsible for the accounting for state money received or paid out for or on account of the Commission and cause the necessary accounting and other related records to be kept (section 16(1))
- (h) The setting of terms and conditions of the appointment of the Chief Executive Officer by Commissioners and that of members of Staff by the Chief Executive Officer (section 16(4) and (5))
- (i) The recommendation on regulations dealing with staff matters by the Commissioners (section 19 (1))

In view of the above, it might be useful to consider having the Chairperson and Deputy Chairpersons appointed by the President and not fellow Commissioners. There might also be a need to spell out the duties of the Chairperson and Deputy Chairperson who are currently remunerated more than other Commissioners.

### ***The Secretariat***

The Chief Executive Officer appointed by Commissioners and accountable to them, is the head of the Secretariat as per the SAHRC Act and also the accounting officer in terms of the PFMA.

The understanding of the roles, powers and duties of the Chief Executive Officer as the head of the Secretariat and accounting officer within the Commission by both Commissioners and the Chief Executive Officer is important for the smooth running of the Commission. However, accountability of the Chief Executive Officer to Commissioners and how this is done is equally important.

The only recommendation that could be made in this regard therefore, is to ensure that both Commissioners and the Chief Executive Officers understand and respect their different roles and responsibilities in the Commission. While the conduct of the CEO is regulated largely by Commissioners the failure to regulate the conduct of Commissioners in relation to the Chief Executive Officer by the National Assembly could affect the smooth running of the institution – this is due to the fact that the Chairperson, Commissioners and the Chief Executive Officer have a limited say on the conduct of an individual Commissioner.

**Question 15**

**Does your institution have mechanisms in place to deal with internal conflict in your institutions? If yes, what are these mechanisms and are they effective?**

The Commission has a set of internal staff regulations that have thus far been effective. Also, there are policies that address themselves to matters relating to conduct and conflict resolution in the workplace. The Code of Conduct of the SAHRC serves as a guideline to all members on what is expected of them both in their individual conduct and in their relationship with others. The performance assessment system is in place to provide an opportunity for both managers and employees to reflect on the progress of the individual employee.

Also, there is provision in the employment contract to the effect that there is mutual understanding of expectations of the employee and the employer. For instance, issues surrounding time of work, remuneration, leave and general behaviour are summarised in the contract of employment. As remuneration is potentially an area of conflict in the workplace, the SAHRC uses the (Equate) job evaluation system to ensure appropriate remuneration for all employees.

In 2003 the SAHRC signed a Recognition Agreement with the majority trade union, the National Education and Health Workers Union (NEHAWU). The Agreement

regulates relations between the unionised employees and management of the SAHRC. It also guarantees continued communication between the union and management on matters of mutual interest.

The creation of the office of the Employee Relations Manager is but one example of showing how serious SAHRC is serious about congruous relations in the workplace.

The Human Resources Department has recently circulated, for review, a revised disciplinary and grievance procedure that will be implemented soon.

**Question 16**

**What mechanisms are in place for Chief Executive Officers, Chairpersons and Commissioners to disclose and/or seek permission for private commercial/financial interests or involvement? Are such mechanisms effective or sufficient to ensure transparency and avoid conflict of interest?**

The terms and conditions of the appointment of Commissioners need to be revisited in respect to their private work. There is no policy yet on disclosing and/or seeking permission for involvement of the executive members in private/commercial organisations. However, in September 2006, members were required to submit forms to declare their membership in boards of organisations. The members were also requested to state on the declaration form whether or not they receive financial reward for their board membership.

Presently, there is no committee established to verify the submissions. The completed submissions are taken to the office of the Chief Executive Officer for review.

A policy on declaration on extracurricular participation in organisations, for example, board membership, will be drafted which will stipulate when the submissions should be made and where they should be submitted. The policy should also outline the necessity of such declaration.

Where relations seem to be breaking down, the parties are encouraged to attempt to deal with the conflict at a personal level before they involve third parties. The SAHRC strives to have communication that is transparent and fair, in a language that accommodates everyone so that involved parties understand what is required of them.

These measures are effective so far, and where there is misunderstanding members are given opportunity to engage with the measures so that the measures may be corrected.

## D. INTERACTION WITH THE PUBLIC

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### Question 17

**What was the intended relation between your institution and the public? To what extent has this relationship been realised?**

As an institution created to support constitutional democracy by promoting, protecting and monitoring human rights it is a given that there is a need for a strong relationship with the public who are ultimately one of the main beneficiaries of the Commissions work.

The SAHRC has interacted with the public in a variety of ways, for example through organised structures such as Civil Society Organisations (CSOs), Non-Governmental Organisations (NGOs), Community Based Organisations (CBOs) etc or directly to communities through its Community Outreach and Advocacy initiatives.

One of the initial and formal ways in which the Commission sought to build relationships with the public was through the establishment of Standing Committees under Section 5 of the SAHRC Act comprised of members of the Commission and others. This system of Committees opened the window of opportunity for the Commission to cooperate with NGOs and to bring into the policy formations aspect of our work other experts from outside the Commission. In this way, the ground was laid of cooperation between the Commission and NGOs as well as with human rights experts and advocates from outside the Commission.<sup>3</sup>

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<sup>3</sup> Barney Pityana, "National Human Rights Institutions at Work: The Case of the South African Human Rights Commission, in K Hossain, LFM Besselink, HSG Selassie, E Volker (eds), Human Rights Commission and Ombudsman Offices. National Experiences Throughout the World, Kluwer Law International, 2000, 627 – 638, at 629

The Community Outreach and Advocacy work of the SAHRC targets, among others, rural communities; civil society structures operating at community level; rural-based professionals; rural municipalities; all spheres of government; townships; peri-urban communities; and school governing boards;

With regard to specific beneficiaries, the SAHRC's Outreach's intended beneficiaries should be constituted by the following specific groups of persons: women; children; HIV/AIDS infected persons; refugees; people with disability; parents; educators; older persons; and scholars.

### ***Targets and Achievements of SAHRC Outreach***

The targets of the Commissions' outreach include the following:

- raising awareness on human rights issues;
- making the Commission more accessible to its intended beneficiaries;
- popularising the work of National Centre for Human Rights Education and Training (NACHRET which is based within the Education and Training Department); and
- education and training

Regarding achievements relating to these targets, although the Commission's outreach work has had limited impact, this should not belie the fact that some impact has been made. For example, while a PAIA guide and handbook for government information officers was produced, its actual impact is yet to be determined. Some positive achievements relate to the SAHRC's work on human rights violations, opening dialogue with human rights sceptics and the visibility of SAHRC in the public eye. In addition, awards for NGOs and government departments on PAIA have been established. The Omnibus Project has also made positive achievements by taking human rights to the people.

The Commission realised numerous achievements as per the Commission's Annual reports.

### ***Limitations/Challenges/Problems***

Although accessibility is one of the achievements of the Commission, it is also a challenge. There are still weaknesses with regard to ‘networking on community outreach in rural communities and visibility’. This is attributed to the fact that there is a lack of skilled operatives on the ground, which could enhance the work of SAHRC. Lack of monitoring and evaluation (M&E) systems and skilled staff appears to be the bane of SAHRC which negatively impacts on sustainability issues relating to outreach, and this appears to criss-cross other aspects of SAHRC’s work.

In addition, working through local partners can sometimes be challenging “due to their unreliability”. This problem was compounded by the “misrepresentation of the work of the Commission” by some local partners. For example, elderly members of the targeted communities perceived SAHRC as promoting the rights for the youth only to the detriment of their rights. On the other hand, some white communities view the SAHRC as an exclusive body aimed at promoting the rights of black persons only.

Other challenges include, among others, the following:

- insufficient literature available in local languages;
- no integrated planning
- insignificant use of radio;
- limited financial resources;
- no provision for accredited courses for beneficiaries; and
- low impact of glossy campaigns.

**Question 18**

**Does your institution have mechanisms in place to deal with complaints by the public about the work done by your institution or the failure to attend to issues?**

The SAHRC's quality assurance mechanisms have been reconfigured into an emerging total quality management system that also fields and process complaints from the public. It consists of the following elements:

- An appeal process to deal with dissatisfactions relating to 'legal complaints handling'.

In terms of the Commission's complaints handling Regulations all decisions/determination and findings made by the legal services department (LSD) can be appealed against by writing to the Chairperson of the Commission. To give effect to this clause every letter of rejection/referral or where a finding has been made, must include a paragraph advising the parties of their right to to appeal.

The Chairperson would request a copy of the file and apply his mind to all the contents thereof and decide either to uphold or dismiss the appeal. If, upheld, he will give directives of what action steps need to be taken. In certain instances, the Chairperson may ask that he be furnished with reasons (if not provided) in writing as to why and how a particular decision was arrived at. In some instances members of the public have reported/complained to the office of the Public Protector and taken the Commission to court arguing that we should have taken their case or found in their favour. However, thus far all the cases against the Commission have been successfully defended.

- The Chairperson and the Chief Executive Officer also receive "performative" complaint from the public which is then referred to the Deputy Chief Executive Officers (Corporate Services/ Operations) for investigation.

- A report with recommendations and/or corrective measures is compiled and submitted to the CEO.
- The procedure also allows for the SAHRC to meet with complainants to address their dissatisfaction.
- Complaints can be lodged in writing, telephonically, electronically or in person.
- A customer satisfaction questionnaire is being developed to source information from the public in relation to the quality of service delivery of the SAHRC.

**Question 19**

**If you deal with public complaints, what mechanisms are in place to deal with such complaints, to follow through on such complaints and to successfully resolve such complaints?**

Legally qualified staff are employed to deal/handle complaints. During the first few years of the Commission's establishment only two legally qualified staff dealt with complaints and they were assisted by interns. Two years later the legal staff increased to four and major investigations took place amongst which was the Public Inquiry into Racism in the Media. Since then the Commission has conducted about ten other public hearings and reports are available on the Commissions website.

Currently there are five qualified legal professionals at the head office and two legally qualified professionals (a provincial manager and a legal officer) in each provincial office dealing with complaints.

Complaints are accepted/received through posted letters, fax, emails and telephone calls. Once the complaints are received in writing, they are registered and allocated reference numbers.

Investigations are conducted through writing allegation letters, *in loco* inspections, public hearings and subpoena hearings. Sections 9 and 10 of the SAHRC Act enables the Commission to issue subpoenas and to enter, search and seize, in any premises whenever we are investigating a complaint of human rights violation.

Public hearings are held whenever the Commission is dealing with a class of complaints that points to potential systematic violation of a right or rights. During hearings members of the public are invited to make written and oral submissions to a panel of Commissioners and independent experts who will thereafter make findings and recommendations that are released in a report.

Subpoena notices may be issued to respondents/persons who fail to respond to the Commission's allegation letters or who fail or refuse to co-operate with the Commission's request for certain information during the investigation process.

All staff members in the legal department are required to submit weekly, monthly and quarterly reports as a tool to monitor progress and quality of work done. If a matter is taken to court no time frame is stipulated within which it must be finalised.

There has been an emphasis within the Commission recently on litigation in the Equality Courts. These courts are under utilised due to a variety of factors despite there still being many unfair discrimination cases.

Regular refresher and training courses on litigation, mediation and legal writing are provided internally within the Commission and are considered to be integral to ensuring effective service delivery..

The Commission has introduced an electronic monitoring system of complaints handling called FlowCentric through which all Commissioners and senior management can easily access all complaints handled by the Commission to check the progress of every complaint file that has been opened.

## **E. FINANCIAL AND OTHER RESOURCE MATTERS**

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### **Question 20**

**Give an indication of your budget allocation, additional funding and expenditure over the past five years.**

### **Key Objectives**

- To develop and implement financial, administration and procurement systems in line with the PFMA and Treasury regulations and other applicable legislations.
- To maintain and develop high-level information and communications technological systems.

### ***Major outputs / impact***

- Budgeting accurately for all programmes to enable them to carry out the mandate of the Commission.
- Compiling monthly financial/ expenditure reports and submit to the CEO, management and to National Treasury on or before the 15<sup>th</sup> every month.
- Compiling Annual Financial Statements for submission to the Auditor- General and to National Treasury on or before the 31 May every year.
- Provision of efficient and effective communication internally and externally through IT systems in place.
- Ensuring adequate assets are in place for use by all within the Commission.
- Providing security and maintenance of the buildings and staff of the SAHRC.

### ***Statistics***

- For the past five years SAHRC has received unqualified audit reports.
- Expenditure trends versus budget allocation has increased over the past 5 years due to an increase in activities that the Commission has engaged itself i.e. public outreach, public hearings, research activities all this needs extra resources in terms of employees who will conduct and perform this activities.

- SAHRC's spending trends as per standard items for the past 5 years are as follows:

Programme	Expenditure Outcome				
	Audited R'000	Audited R'000	Audited R'000	Audited R'000	Audited R'000
	2001/02	2002/03	2003/04	2004/05	2005/06
Personnel	14,799	14,382	18,330	21,246	25,073
Administrative	3,336	3,102	2,005	3,729	6,073
Inventories	603	564	1,178	884	756
Equipment	480	282	3,093	-	119
Land and Buildings rent	2,731	2,538	1,860	4,475	5,403
Professional Services	7,015	7,333	2,992	8,493	4,985
<i>Total</i>	<b>28,964</b>	<b>28,201</b>	<b>29,458</b>	<b>38,827</b>	<b>42,393</b>
<b>Baseline Allocation</b>	<b>21,899</b>	<b>27,401</b>	<b>32,728</b>	<b>37,653</b>	<b>41,774</b>

### Question 21

Please provide detailed information of the remuneration packages for office bearers and Commissioners

#### *Remuneration packages for senior management, 2006*

- Chief Executive Officer = R677, 523
- Deputy CEO: Corporate Services = R558, 307
- Deputy CEO: Operations = R558, 306
- HOD: Legal = R473, 992
- HOD: Research & Documentation = R473, 992
- HOD: Human Resources = R473, 992
- HOD: Finance & Administration = R473, 992

***Remuneration packages for Commissioners, 2006***

- Chairperson = R676, 491 per annum
- Deputy Chairperson = R574, 308 per annum
- Commissioner (full time) = R525, 234 per annum
- Commissioner (full time) = R525, 234 per annum
- Commissioner (part-time) = R261 per hour

**Question 22**

**Please illustrate the budget process followed by your institutions, including the process of allocation of funds.**

*The MTEF budget process followed by the SAHRC may be summarised as follows:*

- Meetings are held between the CEO, DCEO and the HODs to determine and document the strategic direction and objectives of the SAHRC for the next three-year budgeting cycle, taking into account developments during the past and current financial years.
- Guidelines and the strategies for the year are then communicated to the management of the SAHRC, where the CEO establishes budget task teams, comprising of the CEO, DCEOs and HODs.
- Departmental Strategic Plans based on the strategic direction and guidelines supplied, are formulated by the budget task teams.
- Budget task teams then submit strategic plans to HODs for recommendations and approval. Alterations may be made after reviews.
- Draft budget proposals are made per Department in terms of the approved strategic plans.
- HODs prepare budgets on a line item level.
- The Managers and Senior Managers hold meetings with the DCEOs (and the CEO if necessary) to ensure that the focus of the proposed projects as defined are line with the approved strategy and the expectations of the SAHRC. Once

this has been confirmed the budgets are also assessed and amended as necessary.

- Finance and Admin department then consolidate all submissions and balance the budget for submission to the CEO.
- The budget is finalised and submitted to the CEO who will table it before Commissioners for adoption.

### **Question 23**

**Are the current budgetary and administrative arrangements sufficient to ensure the autonomy of Chapter 9 institutions?**

Budgetary and administrative arrangements are adequate to ensure that the Commission achieves its targets as per mandate and over the past years Treasury has been providing necessary support in ensuring that requested funds are provided even if it is not hundred percent.

### ***Challenges***

- Skills shortage is posing a huge challenge when having to comply with relevant applicable legislations.
- Compliance with the supply chain management requirements in terms of getting written quotes for goods and services above R2, 000 is a challenge as suppliers feel that they are being used and do not get business. Others even ask for payment of such requested quotes and this is not covered by the regulation.
- Limited resources/ budget versus huge needs for all programmes in carrying out the mandate of the Commission.
- Keeping up with continuously and ever changing information technology globally.
- Security to the assets of the Commission is threatened by crime in this country at large.
- Gaps within the Public Finance Management on who is the Commission accountable to and the Executive authority.

### ***Recommendations***

- Increase in budget allocation as per submissions made to National Treasury and Justice department.
- Review and update Supply Chain Management regulations to close gaps.
- Re-look at PFMA and change/improve on it, if possible.
- Continuously beefing-up security to avoid incurring asset losses.
- Train and compensate current IT and Finance staff fairly in order to achieve retaining of their skills.

#### **Question 24**

**To what extent are the resources allocated to your institutions directly spent on meeting its key responsibilities?**

- Resources are allocated proportionately to cover all areas relevant to its main responsibilities as well as secondary activities complementing them.
- Personnel budget receives a sixty four percent of the total budget because human resources are the major drivers of achieving the set goals of the Commission where workshops, seminars, research, litigations, public hearings activities has to be performed by highly skilled employees employed by the Commission. The Commission has to offer them with market related remuneration packages to be able to retain them in the long run. The remaining 36 percent is spread through administrative, professional fees, inventories, equipment as well as rental payments of leased buildings.

**RESOURCES ALLOCATION AS PER STANDARD ITEMS FOR 2006/07 – 2008/09**

<b>PROJECTIONS FOR STANDARD ITEMS: 2006/07 – 2008/09</b>	<b>Budget 2005/06</b>	<b>Actual YTD 31 Dec 2005</b>	<b>Approved Budget 2006/07</b>	<b>MTEF 2007/08</b>	<b>MTEF 2008/09</b>	<b>% AGE ALLOCATION</b>
<b>Personnel</b>	25,883,784	17,008,603	31,658,557	35,159,792	36,945,936	64
<b>Administrative</b>	3,576,220	3,062,338	3,288,603	3,266,647	3,354,841	7
<b>Inventories</b>	658,596	636,939	684,468	712,601	743,133	1
<b>Equipment</b>	-	205,304	735,632	294,071	840,000	1
<b>Land &amp; Building rentals</b>	5,668,256	4,234,749	6,656,000	7,320,700	8,051,715	14
<b>Professional services</b>	5,987,144	2,988,469	6,196,740	6,627,190	8,167,375	13
<b>TOTAL BUDGETED EXPENDITURE:</b>	<b>41,774,000</b>	<b>28,136,402</b>	<b>49,220,000</b>	<b>53,381,000</b>	<b>58,103,000</b>	<b>100%</b>
<b>BUDGET ALLOCATION</b>	<b>-41,774,000</b>	<b>-31,329,000</b>	<b>-49,220,000</b>	<b>-53,381,000</b>	<b>-58,103,000</b>	
<b>OTHER INCOME</b>	<b>-</b>	<b>-304,717</b>	<b>-</b>	<b>-</b>	<b>-</b>	
<b>TOTAL BUDGETED INCOME:</b>	<b>-41,774,000</b>	<b>-31,633,717</b>	<b>-49,220,000</b>	<b>-53,381,000</b>	<b>-58,103,000</b>	
<b>BUDGETED (SURPLUS)/ DEFICIT</b>	<b>0</b>	<b>-3,497,315</b>	<b>0</b>	<b>0</b>	<b>0</b>	

**Question 25**

Please tabulate the full staff complement of your institution, including all executive and non-executive staff. Please separate staff in the head office from regional offices, where applicable

<b>Head Office – Executive Staff</b>	
<i>Category</i>	<i>Number</i>
Permanent Commissioners	5
Senior Managers	6
<b>TOTAL</b>	<b>11</b>
<b>Head Office – Non-executive Staff</b>	
<i>Category</i>	<i>Number</i>
Deputy Directors	8
Co-ordinators	4
Personal Assistants	2
Administrative Secretaries	10
Researchers	8
Librarian	1
Library Assistant	1
Legal Practitioners	3
Legal Assistant	1
Legal Officers	3
Complaints Registrar	1
Complaints Administrator	1
Education Officers	5
Publications Officer	1
Administration Officer	1
Assistant Administration Officers	4

Accountant	1
Assistant Accountant	1
Payroll Officer	1
Housekeepers	2
IT Officer	1
Internal Security	1
Switchboard Operator	1
Driver/Messenger	1
HR Administrator	1
HR Training Administrator	1
<b>TOTAL</b>	<b>65</b>
<b>Provincial Offices</b>	
<i>Category</i>	<i>Number</i>
Provincial Managers	7
Legal Officers	6
Education Officers	7
Administrative Secretaries	7
Parliamentary Monitoring Unit	2
Housekeepers	7
<b>TOTAL</b>	<b>36</b>
<b>Short Term Contracts</b>	
<i>Category</i>	<i>Number</i>
Temporary Employees	6
Interns	32
<b><u>TOTAL</u></b>	<b>38</b>
<b>TOTAL EMPLOYEE COMPLEMENT = 150</b>	