

NATIONAL PARTY SUBMISSION ON  
THE HUMAN RIGHTS COMMISSION  
THEME COMMITTEE 6.3

## 1 General

The National Party supports the institution of a Human Rights Commission as envisaged in S115 to 118 of the transitional constitution and as constituted in terms of the relevant legislation, Act 54 of 1994 ("the Act"). The institution as established in South Africa compares well with similar bodies internationally.

## 2 Composition and Structure

We agree with the composition as set out in Section 115 and support the retention of this section. We also agree with the structure of the Commission as set out in the Act where it provides for the establishment of committees of the Commission under the chairmanship of a Commissioner. We believe that the structure and operation of the Commission must be kept as flexible as possible in order to cope with whatever tasks and problems arise. These are after all uncharted waters and the Commission will be doing pioneering work. It should not be pinned down further in its structure. If the Commission wishes to deal with any aspect of any category of rights or conduct an investigation, it can establish a committee to undertake the task.

## 3 Powers and Functions

The powers and functions of the Human Rights Commission should be to promote the protection of all fundamental rights and their application as entrenched in the constitution - see the present section 116 (1). The National Party's position is that all the fundamental rights entrenched in the constitution should be justiciable.

The terms of the Commission's mandate to promote the protection of fundamental rights as set out in Section 116 of the constitution should be retained with possible additions and adjustments. Although we agree that these powers should be framed in broad terms, it may nevertheless be necessary to spell out some functions in the constitution in and if so, to do so greater detail, and to make some additions to the list of functions and powers set out in Section 116. For example: 0 In terms of the needs and perceived needs of the South African community it should, perhaps be spelled out that the Commission has a function to "educate" as well as promote awareness of fundamental rights. The reference to an "educational" function does not appear in so many words in either the constitution or the Act. In fact, much of the Act is devoted to fleshing out Section 116(3) of the constitution and spelling out in detail the investigatory powers of the Commission.

· The other functions of the Commission should receive greater attention in the constitution. The lobbying, monitoring, research and advisory powers of the Commission could be fleshed out in the constitution.

0 Although the constitution is silent on the mediation powers of the Commission, this receives attention in the Act and perhaps there should be specific reference to this in the constitution.

0 Section 116(3) may need clarification. This section provides that "where it is necessary for that purpose to do so it [the Commission] may arrange for or provide for financial assistance to enable proceedings to be taken to a competent court". The Act on the other hand goes further and provides that the Commission "may bring proceedings in a competent court in its own name or on behalf of a person or a group or class of persons". If this function is retained then the Constitution should be adjusted accordingly.

#### 4 Administration

While it may not be necessary to include a reference to staffing of the Commission in the constitution itself (Section 117(1)), the National Party nevertheless believes that a reference to the accountability of the Commission to Parliament and parliamentary control over the Commission's expenditure should be retained in the constitution. The present section 117(2) and section 118 should therefore be retained.