

FREEDOM FRONT  
THEME COMMITTEE 6:  
SPECIALIZED STRUCTURES OF GOVERNMENT  
SUBTHEME COMMITTEE 6.3  
HUMAN RIGHTS COMMISSION

I. **Does South Africa need a Human Rights Commission?**

The Freedom Front is of the opinion that South Africa does need a Human Rights Commission. The introduction of a chapter on fundamental rights into the transitional Constitution of 1994 renders necessary supplementary structures such as a Human Rights Commission. This is also the practice in a number of states that have bills of human rights in their constitutions.

Whereas the Constitutional Court would be at the apex of the judicial enforcement of human rights, it is necessary that additional machinery of an administrative nature be created (a) to establish a human rights culture in South Africa; (b) to advise and guide the government in matters relating to human rights; and (c) to investigate complaints relating to the alleged violation of human rights. A Human Rights Commission will fill this void.

2. **The composition of the Human Rights Commission**

The Human Rights Commission should, like the Constitutional Court, have the confidence of the population at large. It should, accordingly, be composed in a manner that clearly shows that it is not merely a government organ, subject to transient government policies or beliefs.

Section 115(3) of the transitional Constitution does, in some measure, create machinery aimed at appointing as members of the Commission persons who have substantial support in Parliament. We believe, however, that the status and general acceptance of this Commission will be enhanced if an even more rigorous form of election -or appointment than that provided by section 115(3) is required, such as, for instance, unanimity or near-unanimity of the joint committee of the Houses of Parliament, or in some other way.

3. **The proposed role and functions of the Human Rights Commission**

The Freedom Front is in substantial agreement with the provisions of section 116 of the transition: Constitution of 1994 setting out the powers functions of the Human Rights Commission in the transition: phase, and subscribe to the principles enshrined in subsections (1), (2) and (3) of this section as a basis for provisions of the contemplated new Constitution.

We wish to stress, however, that the present section 116(1)(b), which enables and obliges the present Commission to "develop an awareness of fundamental human rights among all the people of the Republic should be expanded to cover expressly the initiation of programmes aimed at the education and training the population in respect of democratic values and human rights, as well as public information projects. It should be pointed out that the International Red Cross has for a number of years been promoting the study of human rights in general and humanitarian law in particular in universities in many states all over the world. In our view such awareness should be brought about also in schools, even though it may be in a more elementary form.

Despite our general agreement with the provisions of section 116 of the present Constitution, we raise the following points of criticism:

- (i) All matters relating to the Human Rights Commission should be regulated " the Constitution. We cannot accept the idea that additional powers and functions of the Commission could be assigned "law" [see section 116(1)], i.e. by ordinary Act of Parliament, as this would make the legal position volatile confidence in the entire structure.
- (ii) The words "which form part of South African law" in the present section 116(2) should apply not only to international human rights law (as it does at present), but also to "other relevant norms of international law" mentioned in this subsection.
- (iii) The provision for financial assistance to litigants (and related forms of relief) in proceedings relating to alleged violation of human rights is too ambitious and its object unattainable in most cases. Moreover, why should financial assistance be limited to cases involving contravention of human rights? The remedy of financial assistance should be considered in the wider context of "access to justice" by indigent litigants generally (dealt with by Theme Committee 5).

#### 4. **The relationship between the Human Rights Commission and other structures of government**

The Freedom Front is of the opinion that it is unnecessary to have a separate Commission on Gender Equality. In its view gender equality can be adequately advanced and ensured by invoking the general

rule of international law prohibiting unfair discrimination, at present enshrined in section 8(1) and (2) of the transitional Constitution and prohibiting expressly unfair discrimination on the grounds of sex. Surely separate commissions on all the matters mentioned in section 8(2) are not justified. Why should sex be excepted?

The Human Rights Commission should, in the view of the Freedom Front, not have any relationship with other specialised structures of government, as this would prejudice its autonomy and independence. It should, however, be able to refer or direct a complainant or a case to the Constitutional Court (although the latter is not a "specialised structure of government"), as is the case in certain European jurisdictions.

5. Other points arising from document B (Draft Report: Human Rights Commission)

(a) Page 1:

A "law reform programme" should be confined to human rights law reform. Law reform generally should still be dealt with by the South African Law Commission.

(b) Page 3

Question 3.2

No, the Human Rights Commission should primarily deal with abuses that occur horizontally. The chapter on fundamental rights in the Constitution should in principle primarily have vertical operation (subject against the State). (This question is still being discussed in Terms of Reference Committee 4.) The same principle should apply here.

(c) Question 3.3

No, public enquiries are in our view not the most appropriate way of dealing with the matter of Socio-Economic rights. We have already stated above (see 2) that the Human Rights Commission should not be merely a government organ: it should be an independent, quasi-judicial body.

(d) Question 3.4

No, the Commission should not generally have the power to arbitrate and make determination: (it may, perhaps, mediate), lest it transgress in a sphere usually reserved for courts of law.