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Prof J Krulik

**CONSTITUTIONAL
ASSEMBLY**

THEME COMMITTEE 6.3

SPECIALISED STRUCTURES OF GOVERNMENT

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**SUBMISSIONS TO THEME COMMITTEE 6
SUBTHEME COMMITTEE 6.3**

VOLUME 7

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THEME COMMITTEE 6:

SPECIALIZED STRUCTURES OF GOVERNMENT

SUBTHEME COMMITTEE 6.3

HUMAN RIGHTS COMMISSION

1. 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 die 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, it is true, 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 transitional Constitution of 1994 setting out the powers of functions of the Human Rights Commission in the transitional 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 people of the Republic" should be expanded to cover expressly the initiation of programmes aimed at the education and training of 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 by the Constitution. We cannot accept the idea that additional powers and functions of the Commission could be assigned "by law". [see section 116(1)], i.e. by ordinary Act of Parliament, as this would make the legal position volatile and undermine public confidence in the entire structure.

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- (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.

...4/-

b) Page 3

Question 3.2

No, the Human Rights Commission should not primarily deal with abuses that occur horizontally. The chapter on fundamental rights in the Constitution should in principle primarily have vertical operation (the subject against the State). (This question is still being discussed in Theme 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 determinations (it may, perhaps, mediate), lest it transgress in a sphere usually reserved for courts of law.

**CENTRE FOR HUMAN RIGHTS
UNIVERSITY OF PRETORIA
SUBMISSION ON THE HUMAN RIGHTS COMMISSION**

1. Introduction

This discussion document is submitted in reaction to the invitation from Subtheme Committee 6.3 of the Constitutional Assembly. It is therefore loosely based on the report on the Human Rights Commission sent out by the Committee and will address four questions:

- 1) What should be the nature and scope of the constitutional provision on the Human Rights Commission in the "final Constitution"?
- 2) What should the role of the Human Rights Commission and its relation with other specialised organs of government be?
- 3) How should the Human Rights Commission be structured?
- 4) What powers should the Commission have?

As a point of departure it should be said that the Human Rights Commission is seen as having a general promotional and protective role in the sense that it has the responsibility for all human rights matters not directly dealt with by other, more specialised organs of state. In exercising its functions the Commission should not be limited to the rights recognised in the Constitution, but aim to bring South Africa in line with those rights recognised by the rest of humanity.

2. The nature of the constitutional provision on the Human Rights Commission

Two options present themselves:

- a provision in the final Constitution that describes the Commission, its functions, powers and structure in detail; or
- a provision couched in general terms, simply stating the general role and function of the Commission and describing the structure in broad terms, leaving the details for parliamentary legislation.

The first, more elaborate option has the advantage that further legislation will not be necessary to establish the Commission. Experience with the Interim Constitution has shown that the enactment of any enabling legislation is very time consuming (the legislation on the present Human Rights Commission being a case in point).

The greatest disadvantage of the elaborate option is, however, that it might create a Commission that will be too inflexible to adjust to changing needs and circumstances. If the Commission is described in detail in the final Constitution itself it would be very difficult to change the nature of the Commission if it proves to be ineffective. This is an important problem: For the Commission to be effective it would have to be able to adjust to changing needs and circumstances and to cater for unforeseen problems. It is therefore imperative that the Commission be a flexible institution as far as the practical details are concerned.

The second, minimalist option avoids this disadvantage. If the powers, function and structure of the Commission are described in general terms in the final Constitution, leaving the specifics to parliamentary legislation, it would be possible to adjust the functioning of the Commission without amending the Constitution.

A further advantage of the minimalist option is the following. A Human Rights Commission is in the process of being established under the Interim Constitution. The commissioners will serve within the system created by the Interim Constitution until 1999. However, the new Constitution needs to be finalised already next year. This means that the experience that will be gained by the present Human Rights Commission during the first years of its operation cannot be taken into account in drafting the new constitutional provision, simply because it will hardly have started functioning by the time the new constitution has to be finalised. If only a skeleton provision is included in the new constitution at this point in time, a more comprehensive statute, which could take into account lessons learnt from the first few years of operation of the Human Rights Commission, can be drafted in 1999.

It is therefore proposed that the constitutional provision establishing the Human Rights Commission in the final constitution should be of a general nature, merely describing the role and structure of the Commission in principle and setting the limits of its powers.

3. The role of the Human Rights Commission and its relationship with other specialised organs of government

The role of the Commission can be any one of or a combination of the following:

- 1) to promote the observance, protection and awareness of and respect for fundamental rights (the "promotional function");
- 2) to advise organs of state on policy matters in order to ensure the observance of fundamental rights by government (the "screening function");
- 3) to act as an investigative body, investigating alleged breaches of fundamental rights (the "investigative function");
- 4) assisting parties in redressing such wrongs (the "assistance function"); and/or
- 5) to act as a tribunal adjudicating breaches of fundamental rights (the "adjudicative function").

The promotional function is a central part of what the Commission should be doing - generally promoting the idea of human rights and the ideal of constitutionalism among members of the public.

The screening function is linked to the promotional and protective functions of the Commission: it should act as a filter, screening - from an international human rights perspective - the acceptability of pending legislation or other actions of government organs. It is foreseeable that the Commission might for example work with government agencies and suggest more "human rights friendly" formulations of legislation. In this way it will promote the idea of human rights in the circles of government and also preemptively protect human rights, protecting citizens and saving the state the cost and

trouble of being taken to the Constitutional Court, and making us a less litigious society.

The investigative function and the powers associated with it are important to ensure greater equality between human rights violators, on the one hand, who often have the resources to cover up dubious activities, and the victims who mostly lack necessary resources. This function has proved to be indispensable in international systems such as that of the Americas (in the Inter-American system "country studies" are undertaken on a regular basis), and also the United Nations. Forceful findings can only be made on the basis of access to verified facts.

A national commission might also have a special interest in piercing the protective screens which the various decentralised structures of government, on a regional and a local level, might erect to hide human rights violations. Active investigation is necessary to obtain a high level of consistency in human rights practice countrywide.

Another aspect of giving teeth to such a commission is to grant them the power to assist victims in redressing wrongs. This could be done by taking up the case of the victim informally, out of court, or by assisting with the preparation of a court case. The "good offices" function which international commissions (such as that of the United Nations, Europe and the Americas) fulfil, would seem to be potentially important in South Africa. The Human Rights Commission could therefore place itself at the disposal of parties involved in a dispute to reach a friendly settlement.

By bringing court cases where nothing else works, powerful legal precedents can be established, which may affect the lives of millions, as has happened for example in the Rikoto case in the 1980's.

It is submitted that, given the wide-ranging options described above, the Commission should not play an adjudicative role. That would add considerably to its workload, and also change its nature from that of an institution which fights side by side with the aggrieved, to that of part of the government structure, which often has to say no, even in deserving cases. That is certain to affect the legitimacy of the Commission in society detrimentally. It is submitted that the Commission should not go further than to play a mediating and possibly arbitrating role, when requested to do so by the relevant parties.

A further question under the above heading is whether the Commission should focus on "horizontal" as well as "vertical" violations of human rights. We have little doubt that the focus should be on both. Not only is it difficult to make a clear conceptual distinction between the two, but looking at the functions of the Commission outlined above, it seems unthinkable that, for example, the Commission should promote the observance of human rights norms on only the horizontal or the vertical plane; screen only laws which operate on the one or the other level, etc.

What should the relationship be between the Commission and other structures of government? The idea has been mooted for a long time now that the Human Rights Commission should act, in addition to any other functions it might have, as the investigative and possibly also the enforcement agency to implement anti-discrimination legislation. This is done, for instance, by the British Commission on Racial Equality and the different provincial Canadian Human Rights Commissions (specifically for instance the Ontario Human Rights Commission).

The most important arguments in favour of this idea are of a practical nature. It is argued that, taking into account the scarcity of resources and especially of qualified people, it would be impracticable to create yet another body (an Equality Commission or Tribunal) to deal with discrimination complaints if the Human Rights Commission could just as well do it. Although this argument carries weight, we would propose that the Human Rights Commission should not be burdened with the enforcement of anti-discrimination legislation.

First it should be noted that anti-discrimination legislation has as yet not been drawn up. Important issues will have to be cleared up in such legislation which will impact directly on the decision whether or not to entrust the enforcement of such legislation to the Human Rights Commission. It is still unclear, for example, exactly what kind of enforcement agency will be required for such legislation: administrative, judicial, merely investigative or all three of these? It also still has to be decided whether the scope of a future Civil Rights Act should be limited to the horizontal protection of equality only or whether it should not be extended to include the horizontal protection of all the fundamental rights enumerated in the Constitution. Before clarity can be reached on these points it cannot be decided that the Human Rights Commission should fulfil this role.

The second argument against including the enforcement of a Civil Rights Act in the functions of the Human Rights Commission has to do with the workload. The Human Rights Commission is going to be a tremendously important institution in the shaping of our society in the course of the next ten years: its different functions will be essential in engendering a human rights culture amongst our people and in bringing the governing of our country up to human rights standards. Our society poses uniquely formidable challenges in this respect.

The protection against discrimination in the private sphere and the adjudication of discrimination complaints is however just as important an issue, and the task will be enormous. It is foreseeable that, in view of the fact that such violations of human rights are not clearly outlawed by the Interim Constitution, and the fact that private discrimination has now started taking over the role which public discrimination played previously, the agency responsible for enforcing the Civil Rights Act will carry a singularly heavy burden, especially in the first years of its existence.

If the Human Rights Commission is burdened, in addition to its other functions, also with the enforcement of anti-discrimination legislation, it is inevitable that a certain amount of prioritisation as far as the allocation of resources is concerned will take place. One of the two will suffer. To avoid this, it is proposed that the enforcement of anti-discrimination legislation be entrusted to a separate body.

A last aspect may be touched upon under this heading. One possible way of ensuring the protection of second generation human rights, short of full protection in the constitution, is to require the submission of reports by the different governmental departments, on a regular basis, to a central authority. This central authority evaluates the reports, after a hearing, and then makes findings and recommendations on the performance of the different departments. These are then submitted to parliament, and which are also made public. The Commission could possibly play the role of this central authority.

This type of mechanism to ensure the protection of second generation rights is used mostly on the level of the international protection of human rights (eg within the Council of Europe and also by the United Nations, under the 1966 Covenant on

Economic, Social and Cultural Rights), but there seems to be no principled reason why it cannot also be used on the national level. If the protection of certain socio-economic rights are for example listed as a national priority in the new Constitution, the Commission could use this as a basis for their enquiry.

4. Structure of the Commission

The Human Rights Commission should be a national Commission composed of a Chairperson, a Vice Chairperson and a number of other Commissioners (possibly twelve Commissioners in total). The Commission should have a staff, headed by a Chief Administrator and appointed by the Commission. The Commission should be divided into departments according to its functions.

In addition, different commissioners could be allocated to different parts of the country as far as promotional and some of the other functions are concerned. That is for example done in the African Commission on Human and Peoples' Rights as far as the different African countries are concerned. Such a system could, for example, also be followed in respect of the screening function, where a certain familiarity with local conditions and role players might be useful.

It is imperative that the structure of the Commission should be such as to ensure that it is an active and powerful institution. The Commissioners should accordingly be appointed in an active capacity and not only as a board of trustees. In this regard it is proposed that a number of Commissioners (including the Chairperson) be appointed in a full-time capacity, with a number appointed part time, as is the case with for instance the Ontario Human Rights Commission (see sections 26 and 27 of the Ontario Human Rights Code) and the Canadian Human Rights Commission (see sections 28 - 38 of the Canadian Human Rights Commission Act) as well as with the present South African legislation on the Human Rights Commission. Their periods of their appointments should be staggered to ensure continuity - they should not terminate their offices all at the same time.

It is important that the Commission be a national, centralised body. The national nature of the Commission would, as pointed out earlier, serve to ensure that uniform standards are maintained countrywide, and "human rights-free" pockets do not develop in certain towns or provinces.

5. Powers of the Commission

As was argued earlier, the powers of the Commission should not be described in detail in the final Constitution - this should be left to legislation. The constitutional provision should simply describe the limits of the powers of the Commission. It should in other words state that the Commission should have such powers as are necessary for the fulfilling of its functions provided that these powers are in accordance with the other provisions of the Constitution.

It has to be mentioned however that, in order to function effectively, the Commission would require wide-ranging and extraordinary powers of search and seizure. In both Canada (see sections 27, 37 and 40 - 44 of the Canadian Human Rights Act and section 32 of the Ontario Human Rights Code) and Britain the comparable institutions have such wide-ranging powers.



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DATE : 11-04-95
NO. OF PAGES : SEVEN (7)
(including this one)

M E S S A G E

Ho. curth submission.
Ms PULI MOLOTO-MOLAMU will
attend Cape Town on Thursday
20/4/95. kindly make the
necessary arrangements for
travel. May Thank - Bharat

HUMAN RIGHTS COMMISSION

INTRODUCTION

Institutional discrimination has been eradicated in the interim constitution. For future reference it seems unlikely that any court in the Republic of South Africa could give any interpretation to the constitution or any legislation which would have the effect of being discriminatory. This stands out clearly from Chapters 2 and 3 read with Chapter 8 of the Constitution watch.

However the weakness is that all the provision except Sections 121 - 123 are futuristic.

WEAKNESS OF GOVERNMENT POLICY

What about the legacy of apartheid. Is Government Policy on redressing imbalance of the past limitates the Reconciliation Development Programme (RDP). Is this in keeping with section 8 of the Constitution ?

My immediate reaction is the answer no.

Much more is needed. Equality before the law cannot be used to entrench the inequalities which resulted from the apartheid era. The RDP does not have a clear policy of

redressing the evils of apartheid. It is more of a bandage to heal the wounds of apartheid. It is a weak and undirected method of helping embattled communities to help themselves.

Not all victims of apartheid are without shelter. There are spiritual and psychological victims of apartheid who do not even seem to understand that there is a new order because no one is saying anything about facing up to the question of victims of apartheid.

Equality before the law should be a starting point, identify areas of inequality through an indepth research, and thorough consultation with the victims of apartheid thereafter should come up with a cure for all social evils. A holistic approach is required. There are a whole lot of unresolved disputes issues and bitterness festering in the hearts of the victims of apartheid which if not addressed will result in the ongoing social strife in South Africa.

STRUCTURE OF HUMAN RESOURCES COMMISSION

A national body with sub-structa at a local levels that

will operate in conjunction with the Commission would serve to crystallise the policy of RDP and direct the RDP to achieve certain specific aims by targeting areas of development.

In my opinion the RDP the HRC and Gender Commission should on some level be fused into a powerful organ dealing with redressing the legacy of discrimination and planning for the future of the country on all levels of the government. The issues in the three department overlap and needs to be treated holistically instead of piece meal.

The bulk of South Africa's problems cannot be solved by legislation but by a in-depth research into the causes and innovative ideas on the solutions. Adoption of foreign ideas is unlikely to have the desired results.

DOES SOUTH AFRICA NEEDS THE HUMAN RESOURCES COMMISSION ?

The answer is yes, but the functions should be different from those enanciated in the interim constitution. The policy behind the appointment of the community should be changed to include a research body identifying the needs of specific communities, the socio-economic needs should be looked into.

ORGANS OF THE HUMAN RESOURCES COMMISSION

Every local authority should have an organ whose main function would be to identify the sources of disintegration and involve the community itself in solving the problems. Social workers, church ministers, teachers and lawyers working with the community could make up such an organ. The personnel of the Commission could convene meeting and preside over meeting of such a body. A body removed from the community would be a useless white elephant.

The other function of the HRC can be futuristic and deal with law reform, identify human rights abuse, education programmes but the HRC should not be burdened with resolving disputes, because from the HRC disputes would still be referred to the Courts.

PROPOSED FUNCTION:

PROPOSED ROLES AND FUNCTION OF THE HUMAN RIGHTS COMMISSION

The functions which I believe would best serve the community are:-

- The Human Rights Commission should be utilised as an instrument for investigating violations of both horizontal (between individuals) and vertical (between the State and its subjects) rights for a time frame predating the new Constitution.

- The Human Rights Commission should participate in the formulation, auditing and reformation of legislation.

- The Human Rights Commission should receive complaints and refer such disputes to the courts, who will be established as specialist tribunal - with particular expertise on Human Rights and discrimination law.

- The promotion and protection of human rights through education, dissemination of information and training programmes for Government officials.

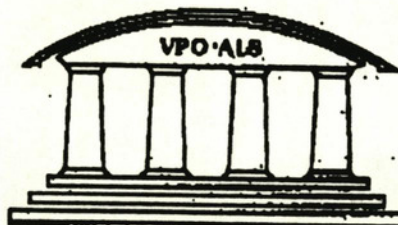
- The Human Rights Commission should receive and investigate complaints human rights infringements from everyone, including third parties.

For as long as the public is ill-informed and illiterate such public inquiries might only serve to confuse issues. I do not support the idea.

Question 3.1 - 3.4 have been answered.

Question 4.1 have already been dealt with above.

The Association of Law Societies of the RSA



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March 31, 1995

BY TELEFAX: 021 461-4339

Ms B Levy
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Dear Ms Levy

SUBMISSIONS FROM STAKEHOLDERS ON THE HUMAN RIGHTS COMMISSION

We refer you to your fax of March 14, 1995. After careful consideration, the ALS has only the following comments to make.

- 1 Provision must be made for a Human Rights Commission in the new Constitution.
- 2 The Commission should not have judgmental powers and should therefore not have the powers of a court.
- 3 The Constitution, when providing for a Human Rights Commission, should limit the powers of the Human Rights Commission so that it could bring only class actions and not act on behalf of individuals.
- 4 The provisions of Act 54 of 1994, which accord with many proposals of the ALS made to the select committees at the time, should be maintained.

Although these comments are very brief, the ALS feels very strongly about it.

Yours faithfully

**A L J VAN VUUREN
DIRECTOR-GENERAL**

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Attention: Bronwyn Levy
Subtheme Committee 6.3
Constitutional Assembly

11 April 1995

Dear Bronwyn

Re: Human Rights Commission

Thank you for inviting us to make a submission about the Human Rights Commission. The written submission deals with our main concerns. Further input and clarification will be given at the oral hearing on Friday 21 April at 11 am. Both Jeremy Sarkin, our National Chairperson, and I will attend.

Yours faithfully

Susie Cowen

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1. THE NEED FOR A HUMAN RIGHTS COMMISSION

The Human Rights Committee believes that a Human Rights Commission will serve a crucial function in South Africa, now and in the future.

- a) Broadly, establishing a Human Rights Commission is a manifestation of a political and societal will to promote, foster and develop a human rights culture and a commitment to protect human rights.
- b) The Commission will be empowered to protect human rights. In this way it will provide a further mechanism, besides the Courts, for individuals to enforce their rights and resolve disputes.
- c) The Commission will monitor human rights legislation. It will make recommendations to ensure that legislation and proposed legislation does not violate human rights. It will also recommend legislative measures to protect human rights.
- d) The Commission will promote community awareness and provide education around human rights.
- e) The Commission should monitor and promote South Africa's observance of its international human rights obligations.

2. THE NEED TO ESTABLISH THE COMMISSION IN TERMS OF THE CONSTITUTION

1. The Commission should be established in terms of the Constitution.

- a) By entrenching the Commission as a constitutional body, its existence over time is ensured. It can't be removed at the whim of government.
- b) Legislation relating to the Commission can then be checked by the Constitutional Court. This will limit interference with the Commission by future governments, thereby promoting its independence and protecting its operation.

2. The general approach should be to frame the constitutional provision in broad terms, leaving the detail to legislation.

- a) This will give the Constitutional Court a standard against which to measure legislation, but at the same time will permit flexibility through legislation.
- b) It will also provide the legislature with a framework within which it can make law.

3. Provision should be made for:

- Appointment procedures
- Functions and powers
- Independence, impartiality and accountability

The Commission must be established to ensure that it can fulfil its functions effectively. The Commissioners who are appointed must ensure that the Commission's goals are pursued vigorously. The powers and the appointment procedures must ensure this.

3.1 Appointment procedures

Provision should be made for a process of appointment which is transparent and which actively involves the public. The process must ensure that Commissioners who are firmly committed to human rights are appointed. Sufficient detail must be included in the Constitution to ensure that certain procedures cannot be departed from.

HRC is concerned about the current procedure in that:

- a) the process promotes a political choice rather than one which is based on ^{primarily} human rights considerations. _A

The Joint Committee which nominates candidates is composed of one member of each political party. In the appointment proceedings which recently took place, the Joint Committee achieved consensus and the Joint Sitting approved its nominations unanimously. The fact that consensus on such a difficult matter was so easily reached brings into question whether human rights considerations received paramount attention or whether the political acceptability of the candidates was paramount.

The procedure must not encourage nominations to be based on political alignments. If it does, the potential is created for a Commissioner with a particular party bias to block action and developments which does not conform with the party position. Such a procedure would also sanction the appointment of a Commission which is reluctant to take a position or take action against government where government violates human rights.

A better approach would be for parliament to appoint a panel, comprised of people from the human rights field, to make nominations to parliament.

- b) the procedure fails to involve the public actively.

In terms of the current procedure, public participation is limited to making nominations to the Joint Committee and observing the interview and deliberation process.

There should also be a period during which public objections about the panel's nominations can be made and considered.

- c) there should not be provision for part-time Commissioners. Rather, Commissioners should serve in a full-time capacity.

If part time Commissioners are appointed, the effectiveness of the Commission is reduced. By making provision for part time members, a mechanism for future governments to weaken the body is created.

3.2 Functions and powers

The Commission must be given powers which ensure that it can play a proactive role in protecting human rights.

The Commission should have the power to investigate human rights violations on its own initiative or on receipt of a complaint. In order to assist parties to secure redress, the Commission should have the power to:

- negotiate, conciliate and mediate
- where the parties agree to arbitration, to appoint an arbitrator
- to provide financial assistance to a party to bring proceedings
- to bring proceedings in its own name
- to refer parties to an appropriate forum

The Commission should not act as a quasi-judicial body. While the commission should play an activist role in protecting human rights, it should not determine questions of law itself. It should not have the power to make determinations. However, it should utilise the mechanisms of alternative dispute resolution to the full.

A difficulty with the current constitutional provision should be noted. The existing provision provides that the Commission may, when necessary, arrange for or provide financial assistance to enable proceeding to be taken to a competent court or may direct a complainant to an appropriate forum. This power has proved problematic in relation the Human Rights Commission Act which empowers the Commission to "bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or persons." A debate has ensued as to whether the Act, by extending the powers of the commission, is unconstitutional or not. The issue can be argued either way. The constitution should be clear on matters such as this.

3.3 Independence, impartiality

The Constitution should include provision for independence and impartiality along the lines found in the current Human Rights Commission Act. Provision for accountability should also be made.

2. VERTICAL AND HORIZONTAL RIGHTS

The commission should deal with both vertical and horizontal human rights issues.

- We do not support the argument that, because there are other mechanisms through which violations in the "vertical" relationship can be addressed, the Commission should deal primarily with horizontal issues. The Public Protector deals primarily with maladministration in government, whereas the focus of the Commission is human rights. Further, there is a need to provide remedies other than through the courts.
- The Commission should strive to promote a human rights culture which pervades all sectors of society. It should not be limited to the vertical relationship.

The limits of the Commission's remedial function in the horizontal relationship will be determined by the extent to which the Constitution operates horizontally. It is expected that civil rights and anti-discrimination legislation will be enacted. Legislation such as this will create rights and provide remedies in the horizontal relationship. These should fall within the scope of the Commission's work.

4. "CATEGORIES" OF RIGHTS

The Commission should deal with all "categories" of rights. It should not be limited to dealing with civil and political rights.

- We do not support the argument that the role of the Commission with

regard to socio-economic rights should be limited to an enquiry function. Although the Commission will not be able to assist parties to find redress where socio-economic rights are violated as vigorously as where civil or political rights are violated, it should attempt to assist where it is possible and appropriate.

- It is our belief that the Commission is a useful forum (where the courts may not be) to advance a conception of rights which recognises the interrelationship and interdependence between the various categories of rights. In particular, the Commission can actively involve itself in public enquiries, education, monitoring and making recommendations about legislation. Where possible and appropriate, it should assist parties in finding redress.

- If ensuring observance of South Africa's international human rights obligations falls within the Commission's jurisdiction, the Commission would be involving itself with rights which fall outside the parameters of first generation rights.

5. THE RELATIONSHIP BETWEEN THE HUMAN RIGHTS COMMISSION AND OTHER SPECIALISED STRUCTURES OF GOVERNMENT

The relationship between the Commission and other specialised structures of government will and should develop over time. However, special consideration needs to be given to the relationship between the Gender Commission and the Human Rights Commission.

It is our submission that there is a need for a separate gender Commission established in terms of the Constitution. This will ensure that sufficient resources and expertise are directed towards gender issues. It also reaffirms a political commitment to address gender issues which is manifested in the interim constitution and has been lauded by gender groups nationally. It also ensures that gender issues will be addressed systematically and over time.

We also believe that the Human Rights Commission should deal with gender issues. We believe that it is important that gender issues are not treated in isolation from other rights issues as they work together.

Although the relationship between the two bodies would develop over time, the Human Rights Commission should probably focus on the enforcement function. A separate Gender Commission should focus on those gender issues which are not strictly rights issues, for example, women's economic empowerment and family violence. Structuring the national machinery in this way will allow gender issues to be addressed vigorously while at the same time gender issues will be dealt with as integral to general rights issues.

CONCLUSION

We should strive to set up a Human Rights Commission which can provide an example internationally, but which has a distinct South African flavour. This is an important opportunity for South Africa to reaffirm its commitment to human rights and an important step on the way to developing a human rights culture.

Thank you for inviting us to participate in this process. We trust that you will find our contribution useful.

HUMAN RIGHTS COMMISSION

As Lawyers For Human Rights has been making submissions in the past on the proposed Human Rights Commission and many of them seem to have been seriously considered, we have therefore decided to deal herein with only issues raised by the Executive Director of the Constitutional Assembly in his letter of invitation. We will deal with the questions in their chronological order as raised in the said letter.

2.1 Whether South Africa needs a Human Rights Commission, whether such Commission should be constitutionalised and nature of the contents of the provisions.

South Africa definitely needs a Human Rights Commission. The country's constitution conferred rights on the people of South Africa but conferment of rights by itself is not sufficient to ensure the realisation of those rights, therefore, there should be well thought out mechanisms to ensure that such rights are given tangible expression and are safeguarded. Human Rights Commissions and other specialised structures have played this important role throughout the world and South Africa is no exception in this instance. Apart from NGO's there have not been and still there is as yet no existing structures to fulfil this role. The only alternative to specialised structures would be the courts of the land. Our courts are not only inexperienced experienced in this regard but also inaccessible and are viewed as being foreign to a human rights culture which the country's constitution seeks to cultivate amongst its people and the state. Our courts have failed dismally in the past in dealing with human rights issues, in fact, they have been accused in some instances of human rights abuses by amongst other things been racist in their administration of justice. A Human Rights Commission is a necessary institution in the realisation of human rights by the people of this country.

The Human Rights Commission should be constitutionalised. Legislation that establishes this institution should form part of the supreme law of the land so that its amendment or repeal should require a greater measure of consensus than that required for ordinary legislation.

We believe that the constitution should only make provision for basic principles with regard to the following: establishment and appointment, powers and functions, independence and accountability. The rest should be left to the legislature for details. We believe that this should be the position because the proposed Commission is new for South Africa and it will definitely need to be adapted to the needs of the people and the country as a whole. The South African society is dynamic and as such in the process of developing itself and it is during the different stages of development that changes may be necessary to the way the commission will be functioning, its structures and other related issues. It is when these issues are provided for in ordinary legislation that changes can be effected with ease whereas it could be extremely difficult to change constitutional provisions.

2.2 How should the Human Rights Commission be composed?

The structure as proposed in the interim Constitution seems to be fine, i.e. the chairperson, deputy chairperson, other commissioners and the executive director. We, however, suggest that there be a tribunal within the Commission structures to ensure that making determinations also becomes part of its functions. There are compelling reasons, in our view,

for establishing a tribunal within the structures of the commission: Firstly, it is assumed that if there is no tribunal, either the constitutional court or ordinary courts of the land would have to make determinations with regard to allegations of human rights violations. The two are not the most appropriate in the circumstances. The constitutional court is primarily concerned with the vertical application of rights and this, in our view, is enough to keep it busy. It may not have the time to deal with other human rights violations occurring on a horizontal basis. It is therefore imperative that a tribunal within the commission be set up to deal with allegations of human rights violations on a horizontal basis or both.

Ordinary courts of the land are not suited to this function and they lack the necessary experience and resources and have in some instances been accused of violating human rights themselves. The composition of the judiciary in our country smacks of both racial and gender discrimination. Human rights investigations and determinations both at the local and international level are highly specialised activities and are best suited to a specialist commission.

Secondly, judicial proceedings in the ordinary courts are the most expensive and too formal for ordinary people whose rights are trampled on a daily basis. Their accessibility is not beyond question. People would therefore prefer a less expensive, less formal and more accessible body like a tribunal within the Commission to deal with their complaints.

2.3 Should any structures be created under the auspices of the Commission to address needs such as law reform, human rights and education programmes, socio economic problems, tribunals and dispute resolution forums.

We strongly believe that there should be specialist structures within the Commission to deal with the above issues. We have already dealt with the tribunal as one such structure. Law reform is a crucial issue in our country which has for many decades been governed by discriminatory legislation. We still have such discriminatory legislation in our statute books today. It is not sufficient to have a blanket clause in the constitution stating that all discriminatory legislation shall cease to be of any effect from the date of application of the constitution. The constitutional court would still be required to determine whether certain legislation is discriminatory. This would be unnecessarily time consuming for this court and therefore the process of legislation audit and of constantly checking on newly passed legislation is imperative if we hope to achieve a human rights culture.

Human rights education programmes are also crucial to the success of building a human rights culture. It is of no use to create rights which the people who are supposed to exercise are not aware of. No one would bother to report any violation because s/he would not know of any right in the first instance that could be violated. The importance of this programmes can not be overemphasised. The human rights education also highlights that with rights also go corresponding obligations.

There is also a strong case for a structure within the commission to address socio-economic problems. Many decades of apartheid and its discriminatory deprivationist and exclusionist policies have left a huge legacy of poverty amongst the majority of the people of this country that it is necessary for a specialist structure within the Commission to address this issue.

As has been stated above that litigation is often expensive, too formal, inaccessible and by its very nature adversarial, a structure within the Commission to resolve disputes in a manner that is acceptable to both parties will be most appropriate, to say the least.

3.1-4 What should be the role and function of the Human Rights Commission?

We are largely in agreement with the proposed role and functions of the Commission as set out in the Executive Director's letter of invitation that:

It should be utilised as an instrument for investigating violations of human rights both vertically and horizontally. It should receive all the complaints and could in appropriate circumstances refer some, especially those occurring vertically, to the constitutional court. In principle it should also deal with violations of this nature although administratively a cordial working relationship with the constitutional court is unavoidable and necessary.

As stated under law reform above, it should also participate in the formulation, auditing and reformation of legislation. This should also include the checking of newly passed legislation at all levels of government.

It should try in appropriate circumstances to resolve complaints through mediation and arbitration. See dispute resolution above. Where this does not help, to make a determination. See Tribunal above.

It should also be involved in actively promoting and protecting human rights through education, dissemination of information and training programmes.

It should hold public enquiries to enable it investigate and to report on socio-economic rights problems. This is important especially bearing in mind that the majority of the people whose socio-economic rights, eg in health, welfare, education etc, are violated could best participate in these public enquiries.

It should also receive complaints from third parties, ie class action. This would help the majority of the people who may not have access to these structures, eg rural communities, prisoners etc.

We also believe that the Commission should be proactive. That it should also investigate matters on its own initiative should the circumstances so require.

4.1 What should be the nature of the relationship between the Commission and other specialised structures of government, especially the Gender Commission?

The Commission should cooperate with other specialised structures of government like the Public Protector/Ombudsman, Land Commission and the Gender Commission. All these structures need to define their roles clearly and share their guidelines in this regard amongst themselves so that there should not be unnecessary duplication. It is when their guidelines are not well defined that there will always be a scramble for jurisdiction or shunning of responsibilities.

With regard to the Commission on Gender Equality in particular, we believe that this Commission's main task shall be to promote gender equality by amongst others carrying out research around gender issues, dissemination of information in this regard, making of recommendations to Parliament and other bodies having legislative powers on proposed or newly passed legislation that affects gender equality and the status of women in general. The Gender Commission may not necessarily have the power to carry out investigations, resolve disputes or make determinations on issues affecting gender equality. It is therefore in this instance that these tasks will be referred to the Human Rights Commission for its attention. It is in this instance that class actions referred to above could be resorted to.

1540

1540

S.A. FEDERATION FOR
MENTAL HEALTH

Formerly National Council for Mental Health

Our Ref.: 8.6

Your Ref.:

12 December 1994

Ms Snakes Nyoka
Manager Theme Committee 6
Constitutional Assembly
P.O. Box 15
CAPE TOWN
8000

Dear Ms Nyoka,

Thank you for your letter of 23 November, 1994 and for consulting us on the issue of gender equality.

We have considered the matter of a Commission on Gender Equality, but are of the opinion that although there is a need for certain gender issues to be addressed, this could best be done by a Human Rights Commission. It is very easy for a women's rights lobby to degenerate into an anti-men lobby, and we would not like to see that happen.

So far as gender issues within our field of operation are concerned we would be particularly interested in the following:

- * protection of mentally handicapped women from forcible sterilisation or abortion.
- * more sympathetic treatment of women who have been raped.
- * protection of women from physical abuse.

An organisation which you could possibly also consult is the National Welfare, Social Service and Development Forum, P.O. Box 53365, Troyeville, 2139 Tel: (011) 339-1269 Fax: (011) 339-1309

Yours sincerely,

LAGE VITUS
NATIONAL EXECUTIVE DIRECTOR

LV/fs

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27

THE HUMAN RIGHTS COMMISSION - SUBMISSIONS BY THE
CONSTITUTIONAL AND HUMAN RIGHTS SUBCOMMITTEE OF
THE GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

MEMORANDUM

.1.

I refer to my written memorandum dated 22nd of March 1995. I also refer to my conversation with Ms Levy of this morning during which I was requested to appear before the Constitutional Assembly on either the 19th or the 20th of April 1995. I mentioned to Ms Levy that I would be in Court from the 20th onwards and that I had arranged consultations for the 18th and 19th.

.2.

Through a colleague of the Pretoria Bar Council, Grobler S.C., contact was made with the Chairman of the General Council of the Bar, Advocate M Wallis S.C.. He indicated that my memorandum had not been circulated to the various Bar Councils, and that the General Council of the Bar was therefore at this stage not in the

position to adopt a final view on the contents of my memorandum. He, however, deemed it important that the relevant submissions to the Constitutional Assembly be made and considered.

.3.

May I therefore at this stage, and in the light of the importance of the relevance of a Civil Rights Act for South Africa, make the following suggestions :

- 3.1 That the Constitutional Assembly and/or its legal advisors appointed for that purpose, adopt a preliminary stand on the issue;
- 3.2 That thereafter the General Bar Council be requested to make further detailed submissions and proposals in this regard;
- 3.3 That it be given sufficient time to do so.

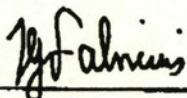
.4.

Should the above suggestion either not be acceptable or practicable at this stage, I am quite prepared to make further written submissions in this context after the

Constitutional Assembly and/or its legal advisors have pinpointed the issues which they feel should be further addressed at this stage.

.5.

In relation to paragraph 3.2 of my memorandum of 22nd March 1995, I need to point out that what I intended to state therein was that the Constitutional Court would be given wider powers than those contained in the present Constitution in the context of its jurisdiction to interdict Parliament and a Provincial Legislature.



H J FABRICIUS S.C.
ADVOCATES' CHAMBERS
PRETORIA
11th April 1995

TO : Ms B LEVY
CONSTITUTIONAL ASSEMBLY THEME COMMITTEE VI
FAX NO : (021) 24-1161

AND
TO : BERTELSMANN S.C.
CHAIRMAN PRETORIA BAR

AND
TO : THE CHAIRMAN OF THE GENERAL COUNCIL OF THE BAR
THROUGH THE SECRETARY
FAX NO : (011) 336-8970

hr-comms.sub

**THE HUMAN RIGHTS COMMISSION - SUBMISSIONS BY THE
CONSTITUTIONAL AND HUMAN RIGHTS SUB-COMMITTEE OF THE GENERAL
COUNCIL OF THE BAR OF SOUTH AFRICA**

MEMORANDUM

.1.

This memorandum is addressed to the Secretary of the General Council of the Bar in response to the invitation addressed to him by the Constitutional Assembly on 14 March 1995. This memorandum will be sent directly to the relevant Sub-Theme Committee of the Constitutional Assembly with a copy to Bartelsmann S.C. (Pretoria Bar) and G Marcus (Johannesburg Bar). Due to time constraints I have been unable to consult the mentioned colleagues, but a copy of my memorandum will be sent to them prior to the closing date for submissions, namely the 28th of March 1995.

.2.

At present, Chapter 8 of the Constitution provides for a statutory Public Protector, Human Rights Commission, Commission on Gender Issues and Restitution of Land

Rights.

I will deal with the questions posed :

.3.

Does South Africa need a Human Rights Commission ? Should this Commission be constitutionalised ? If so, what should be the content of such provision ? Should such a provision be detailed or should detail be left to legislation ?

- 3.1 In my view a Human Rights Commission can play an important role within certain stipulated parameters to achieve those obligations as are presently provided for in terms of the provisions of section 116(1)(a) to (e) of the Constitution. Section 116(1)(a) and (b) gives the Commission undefined and in fact undefinable powers. One can refer to these as being the general powers of the Commission. Sub-sections (c), (d) and (e) are more specific.
- 3.2 Section 116(2) is of substantial importance. The sub-section does, however, in my view, contain a fundamental flaw : It does not oblige the relevant legislature to react to the relevant report of the Commission. It is submitted that section 116(2) be amended to make provision for the

- Page 3 -

following addition after the word "legislature" - "*and to the Constitutional Court*". I have previously suggested that the Constitutional Court be given the power (as in Germany) to interdict Parliament and a Provincial legislature from passing any legislation which would be contrary to the provisions of Chapter 3 of the Constitution or to norms of International Human Rights law which form part of South African law, or to other relevant norms of international law.

3.3 Section 98(2) of the Constitution would therefore have to be amended accordingly.

One major task of the Commission would be to act in terms of section 116(3), i.e. to investigate any alleged violation of fundamental rights and to take certain steps thereafter. It is not clear from this provision whether such obligation relates to the investigation of a violation on a vertical basis or on a horizontal basis. At this stage it seems to be generally accepted that Chapter 3 of the Constitution only has a vertical application. The ideal is of course to achieve a human rights culture and philosophy on all levels. The Human Rights Commission should therefore not operate in a vacuum in this context. In my view, and especially as far as the provisions of section 116(3) are concerned, the Human Rights Commission should operate within the ambit of a "Civil Rights Act". It is therefore my view that a Human Rights Commission should not be

constitutionalised but should operate within the parameters of a separate Civil Rights Act which would obviously have horizontal application.

- 3.4 Inasmuch as is not already provided for by the provisions of Chapter 3, the Human Rights Commission would, in terms of the Civil Rights Act, also operate vertically.

.4.

How should the Human rights Commission be composed ?

- 4.1 The Human Rights Commission would obviously function more efficiently if it were composed of separate but interrelated structures. By way of example, questions of law reform would be more efficiently addressed by lawyers than by non-lawyers. Then again, education programmes and socio-economic problems could most probably be more efficiently dealt with by qualified people in other fields. It could also profitably contain a Dispute Resolution Forum to achieve conciliation in cases of dispute. Such a Forum should function without cumbersome procedures and should, in the absence of conciliation, refer the relevant dispute to a Court.
- 4.2 The present Constitutional Principle XV provides for amendments to the

Constitution by special procedures involving special majorities. This is another reason why I do not believe that the Human Rights Commission should be constitutionalised, but should in fact be contained in a separate statute. The provisions of such a statute, especially because it would deal with aspirations of society which would change from time to time, should be able to be subject to amendment by Parliament as and when necessary and without special procedures requiring special majorities.

.5.

What should be the role and function of the Human Rights Commission ?

5.1 I submit that the Human Rights Commission should *inter alia* function within the ambit of a Civil Rights Act. Within the parameters of such a statute, it would be able to deal with abuses that occur both horizontally and vertically, where such vertical abuses are not already dealt with by way of the provisions of Chapter 3 of the constitution. The Civil Rights Act would deal with abuses in the following spheres (I mention only a few by way of example) :

- (a) Discrimination in places of public accommodation;
- (b) Discrimination in public facilities;

- (c) Discrimination in education;
- (d) Discrimination in employment where such is not already addressed by any relevant Labour Relations Act;
- (e) Religious discrimination;
- (f) Age discrimination;
- (g) Political discrimination;
- (h) Homosexual discrimination;
- (i) Discrimination in public employment;
- (j) Discrimination in housing;
- (k) Discrimination in transportation;
- (l) Discrimination in municipal services and facilities.

A "Civil Right" in American law has been defined as a privilege accorded to an individual, as well as a right due from one individual to another, the

trespassing upon which is a civil injury for which redress may be sought in a civil action. It has been said that interference with a person's lawful conduct and actions is the violation of a civil right. Thus, a civil right is a legally enforceable claim of one person against another. No right that is unenforceable in a Court of law or equity can be classified as a civil right.

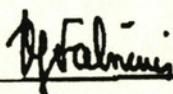
5.2 The Commission should have the power to mediate and to conciliate. Where a justiciable dispute remains, it should have the power to refer the relevant dispute to a Court of law.

5.3 The relationship between the Human Rights Commission and a proposed a Gender Commission: In my view, and if my submission is accepted, there is no need for a Gender Commission. Section 8, the equality clause, of Chapter 3 of the Constitution, adequately makes provision for equal treatment. Where it does not do so, and more particularly by way of horizontal abuses, the proposed Civil Rights Act will do so.

.6.

I therefore propose that the Constitutional and Human Rights sub-Committee of the General Council of the Bar actively supports and promotes a Civil Rights Act and that the General Council of the Bar make the necessary detailed recommendations

to the Constitutional Assembly in this regard.



H J FABRICIUS S.C.

PRETORIA BAR
MARCH 22nd, 1995

TO : Ms B LEVY
CONSTITUTIONAL ASSEMBLY THEME COMMITTEE VI
FAX : (021) 24-1181

AND
TO : BERTELSMAN S.C.
PRETORIA BAR

AND
TO : G MARCUS
JOHANNESBURG BAR

AND
TO : THE CHAIRMAN OF THE GENERAL COUNCIL OF THE BAR
THROUGH THE SECRETARY
FAX : (011) 338-8970

0921

St James Presbyterian Church
Gardenview
2047

15/1/95

The Secretariat
Constitutional Assembly
P O Box 15
CAPE TOWN

RE: THE NEW CONSTITUTION

It is great to allow the general public to put our views to you and our views will be implemented A.S.A.B.

THEME COMMITTEE 1

1) Democracy: Hear Hear "All our people of SA" We really hope that ALL LIVING SOULS in SA are definately in the Democratic Country - NOT just the majority.

2) Character of life:

Character of State should be shared between ALL majority parties and not only ONE party.

THEME COMMITTEE 2

1) Powers should only be within a one Multi-Party Government and not within seperate provinces.

THEME COMMITTEE 3

1) My answer on Committee 2 No. 1) above.

THEME COMMITTEE 4

1) The Bill of Rights must be in favour of ALL (end pg 1)South Africans not just the majority we must be able to have a choice of input as well.

THEME COMMITTEE 5

1) There should be one level and not seperate courts ONLY ONE TYPE OF COURT, for ALL.

2) A One Some type of Judiciary as above. But for ALL South Africans, not for the rich only.

NO PERSONS FROM LEGAL PROFESSION BE ALLOWED IN COURTS

THEME COMMITTEE 6

Public administration

This should be answerable to the Rate Payers ONLY and not to themselves as of now. All this meetings must be open to all the public.

Financial Institutions and Public Commissions

To be ably manpowered and accounts open for public viewing and proper checks on Management Salaries and Perks.

Transforming, Maintaining

Human Rights Commission Should be open to the public and for the benefit of ALL South Africans.

Yours faithfully

D DRUMMOND

SUB THEME GROUP 3 OF THEME COMMITTEE 6

31 JAN 1993

**REPORT ON REPRESENTATIONS AND DEBATES ON THE
HUMAN RIGHTS COMMISSION BILL**

- 1 A Human Rights Commission ("HRC") is established in terms of S115 of the Constitution and S116 sets out the powers and functions of the HRC,
- 2 The Bill was passed by Parliament in November and promulgated in December 1994.
- 3 The legislation considerably expands and develops the powers of the HRC as set out in S116 the Constitution but substantially within the framework set by the Constitution.
- 4 The main debate in the Justice Select Committee around the HRC Bill as submitted by the Minister of Justice and the many submissions on it to the committee basically centred on two issues, namely:
 - 4.1 Whether an entity established to protect Human Rights should be given powers, the exercise of which on behalf of certain people could amount to the violation of the Human Rights of others, (the notorious clause 3). The most serious flaw was identified by inter alia, the Association of Law Societies, the Black Sash and the UCT Department of Public Law as the provision which compelled a witness to give evidence notwithstanding the fact that this might incriminate him or her, and the exclusion of the common and statutory law protections against this. It was a long and difficult debate.
 - 4.2 Whether a body, which can act as a quasi judicial body with powers to hold investigations, conduct searches, seize documents, compel witnesses, should in addition be able to take cases to court. Parties ultimately agreed to let the provision in the Bill stand.
- 5 The original draft of the Bill was truly draconian but most of the fiercer provisions of the Bill have been substantially softened, for instance:
 - 5.1 The power to search a private dwelling without a warrant has been removed
 - 5.2 The power to search without a warrant has been curtailed and placed within acceptable limits
 - 5.3 The power to search people has been removed

- 5.4 The usual protections against self incrimination have been restored
 - 5.5 The right to have a legal representative present at any hearing and any search of premises has been introduced.
 - 5.6 Entry and searching of premises without a warrant is allowed only in narrowly circumscribed cases
 - 5.7 Privilege attaching to document is protected.
- 6 Among other contentious issues were the following:
- 6.1 The length of service of commissioners who are appointed for an initial period of 7 years. The Bill was amended so that they can be appointed for only 1 further term — to prevent atrophication.
 - 6.2 The proper authorisation of administrative staff and committees of the HRC to act — this to be done by a member of the commission in writing.
 - 6.3 Whether or not all commissioners should act in a full time capacity, this was resolved by appointing 5 of the commissioners in a full time capacity.
 - 6.4 Penalties in the event of non-compliance with directives of the HRC.
 - 6.5 Public hearings of the HRC.
 - 6.6 Notices to produce documentation at hearings to include the reasons for this.
 - 6.7 The introduction of the HRC's power to mediate in cases of disputes.

1995 01 31/mg

Box117
PIMBURG
3201

Dear Sir/Madam

To respond on the new constitution which will be drawn this year.

On the new constitution a government must consider the situation of cheap labour - which mostly are uneducated people which now are ignored and now they're more oppressed than before by same whites.

I write this view because I'm one of them. The whites are still calling us ("kaffirs") if you report to local government they cannot give any solution because they know there's nowhere to go if you not helped by them.

The government must have statistics for research if a discrimination takes place anywhere in South Africa - especially in a working place because since elections, we've been victimised by our employers and telling us this is not "Mandela's business, I will fire you and go to tell Mandela to give you a job".

That doesn't sound nice to us but because of that there is nowhere we can go. We keep quiet.

(end page 1)

And if the government cannot consider that, it will cause a big disaster in our country.

That is why I am approaching the government to put on the constitution that if anybody found discriminating anybody he must be prosecuted.

And the government must form department or sources where the people can complain about being discriminated or victimised there must be a research to any working place (eg) shops, hotels, restaurants, bowling clubs contracts (etc).

Know at the moment white employers are dismissing the blacks replacing him/her with the white and other whites are not employing blacks because they must go to ask for jobs from Mandela. This is a very serious matter because the whites keep on firing the blacks and replace them with the whites or indian or coloureds.

Me too I have promised to be dismissed and the white will be employed.

So I approach the government to not talk about protection of the government workers only, everybody must be recognised. Some of the people have no say because of fear that they can be dismissed.

(end page 2)

Now those people need help from the government. And the government cannot do otherwise except he can form a research or put into constitution that if a person or employer found discriminating anybody will be penalised or prosecuted.

Because the whites are recognising us as dogs. Even the police if they are called by the whites against the blacks they come quickly but if they are called by the black against the white they don't come. If they do come to be against black to protect the white.

So I request the government to take care of this or to consider on all this I have mentioned before - disaster can start.

Because this will increase the crime the more the people are dismissed is the more they commit crime.

I myself being discriminated several times but got nowhere to go because I am nothing. I'm not recognised as a human being at work, by government, because I'm not educated. I have no relatives with portfolios in the government. Now that makes me to be nothing. Please government must act now.

Thanks yours faithfully

ZOLILE NONZANGA

Theme Committee 4

PROCEDURE FOR CONSTITUTION - MAKING HUMAN RIGHTS

Danile Daniel Mahe

Submission No: 2446

Received:

1. The people must be made aware of their Rights. The government offices must be furnished with notice boards that will spell out all the Rights of the individuals when he/she is in need of assistance from these offices.

These notice boards must clearly outline the fact that a person has the right to be fully informed about all the pros and cons of his/her problem without paying any bribes.

2. All the clerks of the government must be provided with a booklet in which they will write down the names of all the people they had day in and day out. This will enable the government to know how many people were helped each week. Each office that helps and in the service of the people must be able to provide a clear list of all the different types of services rendered to the people.
3. Mr Chairman, this is the best weapon of minimising bribery in the offices of the government.
4. Birth Certificates
These are supposed to be made available on the day that the child is born at the hospital so that the child's parents are checked as bona fide citizens of South Africa. The child's birth certificate must be signed by superintendent of the hospital in the rural areas. Clinics will be assisted by neighbouring hospitals in each district.

5 Wychwood Ave
Linkside
6001 Port Elizabeth
21/12/94

Dr Ian Thomas

The Secretariat
Constitutional Assembly
P O Box 15
CAPE TOWN
8000

Dear Sir/Madam

Constitutional Assembly Submission

Under the sub theme on Transformation and monitoring my I suggest you add a second item:

2. Integration of the physically impaired into society.

This significant percentage of society, said to be 10-12% has been severely disadvantaged in the past. (end page1)

It is estimated that only 50% have adequate education and that 70% are unemployed. In spite of this, and the acknowledgement by President Mandela of their status as a previously disadvantaged group, they continue to be ignored. Hence the above suggested amendments.

It would appear the RDP also needs a similar amendment.

If I can be of any assistance please contact me.

Yours faithfully

Ian Thomas