

2/21/11/2/4

CONSTITUTIONAL ASSEMBLY

**CONSTITUTIONAL COMMITTEE
SUB-COMMITTEE**

**HUMAN RIGHTS COMMISSION
FOURTH DRAFT - 6 AUGUST 1995**

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Status: Processed by CC on 4 August 1995. For consideration by CC Subcommittee. The footnotes relate to the CC debate.

HUMAN RIGHTS COMMISSION

Establishment and governing principles¹

1. (1) There shall be a Human Rights Commission for the Republic.
- (2) The Commission shall be independent and subject only to this Constitution and the law.
- (3) The Commission shall discharge its powers and functions impartially and without fear, favour or prejudice.
- (4) Organs of state shall through legislative and other measures accord the Commission the necessary assistance and protection to ensure its independence, impartiality and effectiveness.
- (5) The Commission shall be accountable to Parliament for its activities, and shall report to Parliament on such activities at least once a year.

¹ Discussion of section 1 was deferred pending the comparative analysis to be undertaken in relation to all independent structures of government.

Powers and functions

2.²

² Broad consensus emerged in the CC on Option 2 provided in the Third Draft subject to certain reservations about

- the appropriateness of the term "fundamental rights";
- the absence of an interventionist role for the HRC;
- the lack of a proper focus on the promotion of a human rights culture; and
- the necessity of subsection (2) of the Option.

Taking these reservations into account we suggest the Option to be reformulated as follows:

"The Human Rights Commission shall promote the development, protection and fulfilment of human rights and generally the cultivation of a culture of human rights in South Africa. It shall for this purpose have the necessary powers accorded to it by law, including such powers as are necessary to monitor, investigate and report on the observance of human rights and to secure appropriate redress where human rights have been breached."

Appointments of members

3.³

³ There is disagreement among the parties on the method of selection and appointment of commissioners. There are two views, the one supports the approach in section 115(3) of the interim Constitution. The other view calls for the creation of an independent panel to select and recommend persons to the President for appointment as commissioners. Qualifications for members of the Commission also need further debate. These are the two options:

Option 1:

- "4. (1) The members of the Human Rights Commission shall be appointed by the President on recommendation by Parliament.
- (2) Parliament shall only recommend a person for appointment to the Commission -
- (a) who has been nominated by a committee of Parliament composed of one representative of each party represented in Parliament and willing to participate in the committee: and
- (b) whose nomination has been approved by Parliament by a resolution adopted by a majority of at least 75% of the members present and voting.
- (3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights."

Option 2:

- "4. (1) The members of the Human Rights Commission shall be appointed by the President on recommendation by an independent panel of human rights experts, who do not hold office in any political party or organisation.
- (2) Such panel of human rights experts shall be appointed by a multi-party parliamentary committee by resolution of a majority of at least two-thirds of its members.
- (3) A member of the Commission shall be an independent and impartial person of integrity who has a personal commitment to the promotion of fundamental rights."

NB: The CC decided that appointment procedures be dealt with in the context of the comparative analysis of all appointment procedures. The same applies to the qualifications of members of the HRC.

