

214/6/5/1/10

CONSTITUTIONAL ASSEMBLY

THEME COMMITTEE 6.3

SPECIALISED STRUCTURES OF GOVERNMENT

29 May 1995

E305

DOCUMENTATION

Entire document embargoed until 14:00 on 29/5/95

TABLE OF CONTENTS

| | | |
|-----|---|------------|
| 1. | Memo | pg 1 |
| 2. | Agenda 29 May 1995 | pg 2 |
| 3. | Minutes 29 May 1995 | pgs 3 - 21 |
| 3.1 | Annexure 'A' - Draft Report on the Human Rights Commission. | |

CONSTITUTIONAL ASSEMBLY
SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION
OF
THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

MEMORANDUM

TO: ALL MEMBERS OF SUBTHEME COMMITTEE THREE
FROM: Bronwen Levy (Secretariat)
RE: Subtheme Committee 6.3 meeting
DATE: 25 May 1995

Please be advised that there will be a meeting of Subtheme Committee 6.3, the details of the meeting are as follows:

VENUE: E305
TIME: 14:00
DATE: 29 MAY 1995

Enquiries Ms B Levy 403 2182 or 245 031 ext 234

CONSTITUTIONAL ASSEMBLY
SUBTHEME COMMITTEE THREE
TRANSFORMATION, MONITORING AND EVALUATION
OF
THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

29 May 1995

AGENDA

- 1. Opening and Welcome**
- 2. Adoption of minutes**
 - 2.1 Minutes of the meeting of 22 May 1995**
- 3. Draft report on the Human Rights Commission**
 - 3.1 Report on party comments**
 - 3.3 Process towards finalisation of report**
- 4. Workshop on National Machinery for the advancement of Women**
- 5. Workshop on Land**
- 6. Any other business**
- 7. Closure**

HASSEN EBRAHIM
EXECUTIVE DIRECTOR

Enquiries Ms B Levy 245 031 ext 234 or 403 2182

CONSTITUTIONAL ASSEMBLY
SUBTHEME COMMITTEE THREE
TRANSFORMATION, EVALUATION AND MONITORING
OF
THEME COMMITTEE SIX
SPECIALISED STRUCTURES OF GOVERNMENT

22 MAY 1995

Present
Kgositsile B (Chairperson)

Fenyane SLE
Louw L
Malan TJ
Moatshe P
Mokoena LM
Mompoti R
Nqwemesha KW
Van Wyk A
Van Zyl ID
Zitha DA

Apologies: Camerer S

Albertyn C, Levy B and Nyoka S were in attendance.

1. Opening and Welcome

1.1 Ms Kgositsile opened the meeting at 9:00 and welcomed the members.

2. Adoption of Minutes

2.1 Meeting of 22 May 1995

The minutes were adopted with the following change:

2.1.1 Mompoti R should be added to the members present.

3. Draft Constitutional formulations on the Public Protector

3.1 Ms Kgositsile reported the following:

3.1.1 A subcommittee, consisting of one representative from each political party in the Subtheme Committee had met on 18 May 1995, as per the mandate of the meeting of the 15 May, to examine the draft formulation on the Public Protector.

3.1.2 This subcommittee would reconvene on Monday 22 May 1995 to finalise the draft formulation for transmission to the Constitutional Committee.

4. Draft report on the Human Rights Commission

4.1 The Technical Committee presented the draft report on the Human Rights Commission (see annexure 'A'). The Technical Committee needed clarity from the parties on whether the report reflected the discussions of the Committee generally as well as on the following specific areas in the report:

4.1.1 Submissions received from Political Parties:

- i) The IFP initially submitted a general submission on the constitution more broadly. The IFP submission didn't deal with the Human Rights Commission directly, however the discussion on the application of the Bill of Rights in the general implied that the IFP would support the application of vertical and horizontal rights. Thus Parties would need to clarify whether the report can reflect that a submission was received from the IFP on the Human Rights Commission.

4.1.2 The definition of agreement:

- i) In instances where parties and stakeholders are in disagreement is this then reflected as a disagreement.
- ii) Much of the recorded disagreement are issues that can be dealt with in legislation. Thus parties should clarify exactly which areas they believe should be constitutionalised and what matters should be left to legislation.

- iii) Where reference has made to "implicit agreement" it has arisen out of both explicit and implicit references, in particular where parties have been silent on a specific issue. Thus parties must clarify in these instances whether in fact there is agreement on these matters.

4.1.3 The Constitutionalisation of the Human Rights Commission:

- i) There is support from all political parties for the constitutionalisation of the Human Rights Commission. However the NP does not explicitly state this in their submission.

With regard to stakeholders, the Black Sash and General Council of Bar argued that there was no consensus in their respective organisations with regard to the issue of constitutionalising the Human Rights Commission (par.9).

4.1.4 Structure and composition of the Human Rights Commission:

- i) There is support from all parties and stakeholders that the Commission should be independent. However, there is disagreement on the nature of the selection process and whether this process needs to be constitutionalised (par.12).
- ii) There is a need to clarify whether the size of the Commission should be constitutionalised (par.12.2).

4.1.5 Accountability:

- i) Whether all parties that the Commission should be accountable to parliament generally and in terms of parliamentary control over its expenditure (par.14).

4.1.6 Jurisdiction:

- i) There is a need to clarify the following:
 - a) Whether there is agreement that the Commission should carry out its functions with regard to all levels of government (par.6).
 - b) Whether the Commission should deal with both

the horizontal and vertical application of rights (par.10).

- c) Whether socio economic rights falls within the ambit of Constitutional Principle II and thus within the jurisdiction of the Commission.

Whether the Commission should consider all socio economic rights or only those that are contained in the Bill of Rights in the Interim Constitution and are justiciable (par.11).

4.1.6 Powers and Functions

- i) There is a need to clarify the following:

- a) Whether the Commission should have the types of powers that are stipulated in s116 (1), (2) and (3) of the Interim Constitution, and that these sections should serve as a guide to the powers and functions for constitutionalisation.

- b) Whether there is disagreement as to powers and functions serving as an open or closed list, the detail of the constitutional powers and whether the additional suggestions made to the powers and functions can be accommodated in legislation (par.7).

- ii) With regard to the specific powers and functions of the Commission, there is a need to clarify the following:

- a) Whether the Commission should prioritise systemic problems (par.13).

- b) Whether the education function needs to be spelt out more clearly (par.15.4).

- c) Whether the Commission should have wide ranging investigative powers and whether these powers should be constitutionalised (par.15).

- d) How far should the Commission be empowered to assist parties to redress wrongs (par.15.8).

- e) Whether the current constitutional wording limits the Commissions power in relation to international human rights (par.15.9).

4.1.7 Issues for legislation

- i) Clarity is needed with regard to whether the following issues should be considered for legislation only:
 - a) **Structure and Composition (par.16):** Whether the Commission should be organised nationally and regionally, its internal organisation, its relationship with CBO's and NGO's and the appointment of Commissioners.
 - b) **The establishment of a tribunal (par.17)**
 - c) **The Commissions relationship with other specialised structures of government (par.18)**
 - d) **Powers and Functions (par.19):** Whether the Commission should hold Public Enquiries to investigate and report on socio - economic rights problems.

4.2 Discussion on report

The following issues were raised as points of discussion:

4.2.1 The status of stakeholder submissions:

Clarity is sought on the status of stakeholders' submissions in the final report. Should the positions of stakeholders' be recorded in the final report ?

4.2.2 The Vienna Declaration's views on Human Rights:

The Vienna Declaration recognised the following:

- i) That all human rights have equal status
- ii) That human rights can be promoted in a variety of ways
- iii) That all human rights could not be enforced in the same way and that there were a variety of ways in which socio economic

rights could be implemented.

4.3 Process towards the finalisation of the report on the Human Rights Commission

4.3.1 The Committee agreed to the following:

- i) Parties would endeavour to send their comments to the Secretariat by Thursday so that the Technical Committee could amend the report for the meeting on 29 May 1995.

4.3.2 Concern was raised that all parties may not be in a position to forward their comments to the Secretariat by Thursday.

5. Gender Workshop

The Committee agreed to the following changes with regard to the agenda for the Workshop on National Machinery for the Advancement of Women:

5.1 Dr Ramphela should be approached to give an alternative perspective on the needs of South African women.

5.2 That the discussion on " What are the needs of South African Women " should set the tone for the workshop. Thus it was suggested that the programme be adjusted so that the needs of South African women be discussed first.

6. Constitutional Public Meetings and National Sector Hearings

Members were asked to forward their forms to the Secretariat with regard to the meetings and hearings they wanted to attend.

7. Any other business

There was no further business.

8. Closure

The meeting rose at 11:00.

'A'

**DRAFT FOR CONFIRMATION
CONSTITUTIONAL ASSEMBLY**

**SUBTHEME COMMITTEE 3;
THEME COMMITTEE 6**

19 May 1995

FINAL REPORT OF SUBMISSIONS: HUMAN RIGHTS COMMISSION

PART 1 - INTRODUCTION

1 Submissions received

This report summarises the issues and debates emerging from submissions received from political parties, organisations of civil society, public debates during February 1995, public hearings during April 1995 and an information seminar.

1.1 Political parties

- 1.1.1 ACDP
- 1.1.2 ANC
- 1.1.3 DP
- 1.1.4 FF
- 1.1.5 IFP
- 1.1.6 NP

1.2 Organisations of Civil Society

- 1.2.1 Association of Law Societies (ALS)
- 1.2.2 Black Lawyers Association (BLA)
- 1.2.3 Black Sash (BS)
- 1.2.4 Centre for Human Rights, University of Pretoria (CHR/UP)
- 1.2.5 General Council of the Bar (GCB)
- 1.2.6 Human Rights Committee (HRC)
- 1.2.7 Lawyers for Human Rights (LHR)
- 1.2.8 Legal Resources Centre (LRC)
- 1.2.9 National Association of Democratic Lawyers (NADEL)
- 1.2.10 National Land Committee (NLC)

1.3 Information seminars (February 1995 by Brian Currin)

1.4 Interim reports prepared by the technical advisors:

- 1.4.1 An Introduction to the Human Rights Commission (C Albertyn)
- 1.4.2 First draft summary of submissions (R Erwee)

1.4.3 First draft of areas of agreement and disagreement (R Erwee)

1.5 Public Participation

No information has been gathered from a meeting held under the public participation programme.

2 Constitutional Principles

The Constitutional Principle applicable to this Commission is Principle II

Everyone shall enjoy all universally accepted fundamental rights, freedoms and civil liberties, which shall be provided for and protected by entrenched and justiciable provisions in the Constitution, which shall be drafted after having given due consideration to inter alia the fundamental rights contained in Chapter 3 of this Constitution.

It can also be argued that Principle III (prohibition of racial, gender and all forms of discrimination) as well as Principle V (equality in the legal system) have a bearing on the roles and functions of this Commission.

PART II DISCUSSION OF MATERIAL PROCESSED BY THE COMMITTEE

3 General Overview

During the initial seminar programme and debates in February the Theme Committee discussed the Human Rights Commission and raised a number of critical issues with regard to the scope, role, functions, powers and structure of the Commission. These issues gave rise to a list of questions that were sent to organisations in civil society. Some of the organisations provided written submissions prior to participation in public hearings.

The main issues of debate which were tested in public hearings, were:

- 3.1 the composition and structure of the Commission
- 3.2 whether the Commission should consider both the horizontal and vertical application of human rights.
- 3.3 the powers and functions of the Commission;
- 3.4 the role of the Commission with regard to socio-economic rights; and
- 3.5 the Commission's role in relation to the other specialised structures of Government.

There is a considerable amount of agreement amongst the parties and

stakeholders, although not always unanimous agreement. All disagreement is recorded below, with indication as to where there is a majority as opposed to a minority position. Much of the recorded disagreement refers to matters which should be dealt with by legislation. Where "implicit agreement" is recorded, we have derived the agreement from a combination of explicit references and implicit references in the various submissions.

This summary contains more detail than is required in the constitutional text. This is necessary because (a) the submissions, especially those by stakeholders, tended to cover a wide range of issues, and (b) the Theme Committee found it necessary to canvass all aspects of the Commission. Some attempt has been made in this summary to distinguish constitutional from legislative matters. However, this will be done in more simplified form in the final report of the Committee's deliberations on the Human Rights Commission.

Areas of Agreement

4 Constitutionalisation of the Commission

- 4.1 There is support among parties (ACDP, ANC, DP, FF, IFP) and stakeholders (ALS, BLA, BS, CAR, HRC, LHR, LRC, NADEL) for the constitutionalisation of a Human Rights Commission in the Constitution. Although the GCB opposed this, it is not a consensus position of that organisation (see para. 9).
- 4.2 There is agreement that the constitution should deal with broad principles of the Commission, namely, establishment, composition and appointment, essential powers and functions, independence and accountability. Further details should be left to legislation. There is general support for the level of detail, or less, that is found in the interim constitution.

5 Structure and composition:

- 5.1 Independence: All parties and stakeholders agree that the Commission should be an independent body accountable to Parliament. It must be subject to the constitution and to the law only.
- 5.2 Selection and appointment of commissioners: There is general agreement that the Commissioners should be independent in so far as the Commission itself is said to be independent. Some submission added further qualifications to be placed in the constitution. There is disagreement over the method of selection. Both of these issues are dealt with below in para 12.

6 Jurisdiction

There appears to be implicit agreement that the Commission should carry out its functions in respect of all levels of government.

7 Powers and functions

There is implicit agreement that the Commission should have the kind of powers and functions stipulated in section 116 (1), (2) & (3) of the interim constitution, and that these sections should serve as a guide to the powers and functions that are written into the final constitutional text. (Explicit - NP, ANC, LRC; implicit - DP, ALS, FF, BS, GCB, HRC, LHR). It is also agreed that the final text should sketch broad powers only and provide a broad mandate to the Commission to protect, promote, respect and fulfil human rights. (see para 14.2) This constitutional mandate could be fleshed out by legislation.

The various powers are listed below. The text of the interim constitution has been added to facilitate an understanding of the issues. Often the agreement appears to be a general one - However, there were differences (a) as to whether this should be an open or closed list; (b) in the detail of these constitutional powers (see areas of disagreement) and (c) in respect of various additions made to these and other powers and functions (see section on legislation).

- 7.1 General mandate (section 116 (1)(a))
"to promote the observance of respect for and the protection of human rights"
 There seems to be general agreement on this function.
- 7.2 Promotion/education/awareness-raising. (section 116 (1) (a) & (b)).
"to promote the observance of respect for and the protection of human rights"
"develop an awareness of fundamental rights among all peoples of the Republic".
 The ANC, DP, FF, ALS, BLA, BS, CHR (UP), HRC, NADEL and LHR indicated that this should be a central function of the Commission. The NP also supported this function.
- 7.3 Monitoring Function (section 116(2) and 116(1)(c) & (e)).
"make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and this Constitution, as well as appropriate measures for the further observance of such rights"
"request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights"

"If the Commission is of the opinion that any proposed legislation might be contrary to Chapter 3 or to norms of international human rights law which form part of South African law or to other relevant norms of international law, it shall immediately report that fact to the relevant legislature"

Explanation: These sections provide that the Commission should monitor proposed legislation and report where such legislation is contrary to human rights. Implicit within these sections is the power to monitor and review government policy and administrative provisions and procedures with respect to their compliance with human rights standards as well as make recommendations for change. The Commission is entitled to obtain information from any organ of state for such purposes of monitoring and recommendations

Again, there seems to be implicit agreement on this. (but see para. 15.5 below for details of further suggestions).

- 7.4 **Advisory/lobbying Function (section 116(1)(c) and 116(2)).**
"make recommendations to organs of state at all levels of government where it considers such action advisable for the adoption of progressive measures for the promotion of fundamental rights within the framework of the law and this Constitution, as well as appropriate measures for the further observance of such rights"
"If the Commission is of the opinion that any proposed legislation might be contrary to Chapter 3 or to norms of international human rights law which form part of South African law or to other relevant norms of international law, it shall immediately report that fact to the relevant legislature"
 Linked to the monitoring function, but also operating separately from it, is the power to advise and make recommendations to government and parliament on human rights. Again, there appears to be agreement on this function. But see para. 15.6 below for points of disagreement and further suggestions.
- 7.5 **Research Function (section 116(1)(d))**
"undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions"
 Stakeholders and parties appear to support a research function. See para. 19 below for further suggestions.
- 7.6 **Investigative Function: (section 116(3))**
"The Commission shall be competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of fundamental rights..."
 All appear to agree that the Commission should investigate complaints of abuses of human rights upon receipt of an complaint and on its own initiative. However there are differences in nature and extent of investigative functions, and how these should be

constitutionalised or written into legislation (see para 15.7 below).

7.7 Assisting parties to redress wrongs (116(3)):

"if (it) is of the opinion that there is substance to any complaint made to it, (the Commission) shall, in so far as it is able to do so, assist the complainant and any other person adversely affected thereby, to secure redress".

There appears to be general agreement on the power to settle complaints through mediation, negotiation and conciliation, and that it could refer matters to court. There is also agreement that the Commission should not have adjudicative powers.

There is some disagreement on further powers in respect of redressing wrongs however (see below at para. ..).

8 Relationship with other specialised structures of government

All appeared to feel that the relationship between the Public Protector, the Human Rights Commission and the Commission for Gender Equality should not be formalised in the constitution, but should be let to evolve and to develop their own methods of referral and liaison.

Areas of disagreement and need for further clarity

9 Constitutionalisation of the Commission

The GCB argued that the Human Rights Commission should not be constitutionalised, but should operate within the parameters of a separate Civil Rights Act. However this was not a consensus position of the GCB. Black Sash gave no position on this as the organisation is also divided on the issue.

10 Jurisdiction: Horizontal and vertical violations of rights

10.1 The majority position is that the Human Rights Commission should deal with both the vertical and horizontal application of rights (ANC, DP, IFP, BS, CHR/UP, GCB, HRC, LHR, LRC, NADEL and BLA).

10.2 The minority position expressed by the FF states that the chapter on fundamental rights in the Constitution should "primarily" have vertical operation. However, this does not appear to exclude some level of horizontal application. The NP appears to be silent on this point. Clarification is required on whether there is, in fact, agreement on this point.

11 Application to social and economic rights:

It seems as if the role of the Human Rights Commission in respect of all human rights, including social and economic rights, relates directly to the interpretation of Constitutional Principle II and the phrase "all universally accepted fundamental rights" is relevant here (see the report of Theme Committee 4 in this respect).

However, there does seem to be a majority opinion that the Commission should consider at least some, if not all, social and economic rights. The consideration of all socio economic rights is explicitly supported by the ANC. The DP adds a qualification that it depends on whether social and economic rights are included in Chapter three, while the NP seems to adopt a similar position that the Commission should consider social and economic rights to the extent that they are contained in the bill of rights and justiciable. The FF appears to support this, but clarity is required, and the ACDP is silent on the issue. The majority of the stakeholders support the Commission considering social and economic rights (BS, BLA, CHR/UP, HRC, LHR, LRC). Clarity is required on this point.

12 Structure and Composition:

12.1 Selection:

12.1.1

The political parties appear to support the method of selection laid down in the interim constitution (ACDP, FF, NP). The ANC merely refers to selection by parliament of "independent and qualified" persons. The FF require unanimity or near-unanimity of a joint committee of both houses of parliament.

12.1.2

However, the majority of the stakeholders caution that a more rigorous form of election or appointment is required than that provided by section 115(3) to ensure that commissioners have substantial public support. In particular, the nominations and selection procedure must not encourage nominations to be based on political alignments. (BS, HRC, LRC, Nadel). A common suggestion was that parliament should play an indirect role:

12.1.2.1

Selection should be carried out by a panel comprised of independent and human rights experts selected by a parliamentary committee. Either no parliamentarians or a minority of parliamentarians should sit on this Panel which should compile the list of Commissioners. (LRC, HRC, Nadel, BS).

12.1.2.2

There should be time and space for public participation between the publication of the list

- and its approval by parliament. (HRC)
- 12.1.2.3 Additional criteria should be added to the constitution for qualification as commissioners. Suggestions included:
- 12.1.2.3.1 Independent and impartial; (HRC)
- 12.1.2.3.2 A commitment to human rights/track record of human rights/knowledge of or background in human rights/practical experience of human rights; (LRC < HRC < BS)
- 12.1.2.3.3 high moral standing; person of integrity (CHR/UP).

12.2 Size

The question as to whether the size of the Commission should be specified in the Constitution is not clear. The DP suggests that it should not be included or left to legislation. If included, this should be done in broad terms, eg. "between 3 and 11". Further clarity is required on whether this is a constitutional issue.

13 Prioritising systemic problems:

Some submissions agreed that the Commission should be concerned with both individual complaints and systemic problems (for example, the BS, CHR/UP, LRC). In respect of the latter, the LRC pointed out that the courts do not deal effectively with systemic problems; and issues of social and economic rights. The Commission would be much better placed to address these issues, especially in respect of the fact-finding processes, progressive implementation and continuous supervision of the realisation of these rights. The LRC suggested that this be written into the Constitution in section 116 in the following manner:

"The Commission shall be competent to investigate on its own initiative, or on the receipt of a complaint, any alleged violation of human rights; Provided that the Commission shall, within the exercise of its discretion, give priority to matters where a systematic or systemic violation of fundamental human rights is alleged."

Clarity is required on whether there is support for the inclusion of this in the constitution.

14 Accountability:

The NP believes that the Commission should be accountable to Parliament generally and in terms of parliamentary control over its expenditure. This appears to be the position of other parties. Clarity is required.

15 Powers and Functions:

- 15.1 There is no agreement on whether the constitution should include an open or closed list of powers and functions of the Commission.
- 15.1.1 The majority position appears to support an open list such as that currently found in the interim constitution. Section 116 reads "The Commission shall, *in addition to any powers and functions assigned to it by law*, be competent and obliged to -".
- 15.1.2 However the Freedom Front calls for closed list with no additional powers and functions assigned by law.
- 15.2 General comments on the wording in the constitution: CHR/UP and LRC suggest that the wording is repetitive and could be streamlined. The DP similarly believes that the wording could be reduced. The NP believes that it should be fleshed out
- 15.3 General Mandate:
LRC suggests an amendment to read:
"promote the protection of, respect for and fulfilment of fundamental human rights".
This corresponds to international human rights language.
- 15.4 Educational function:
The NP and FF feel that the education function should be spelt out more clearly. The FF wants it specifically to cover the initiation of programmes aimed at education around democratic values and human rights, and public information projects.
- 15.5 Monitoring function:
The ability to obtain information from organs of state so that the Commission may effectively monitor state compliance with human rights norms is mentioned by BS. The CHR(UP) recommend that a way of ensuring the protection of second generation human rights, is to require the submission of reports by the different governmental departments on a regular basis to a central authority which could be the Commission. The Commission could evaluate the reports after a hearing and make recommendations on the performance of different departments. These are submitted to Parliament and are made public. This is presently provided for in 116(1)(e).

In addition, the GCB emphasises that subsection 116(2) contains a flaw in that it does not oblige the relevant legislature to react to the relevant report of the Commission. The GCB submits that this section be amended to make provision for a reference to the Constitutional Court, so that this Court may be given the power to interdict Parliament and a provincial legislator from passing any legislation which would be contrary to the provisions of Chapter 3 of the Constitution (or to relevant norms of international law).

15.6 Advisory function (116(2)):

The FF argues that law reform should be confined to human rights law reform, as law reform can be dealt with by the SA Law Commission.

15.7 Investigative Function:

While the majority of parties appear to believe that the detail of the investigative powers should be left to legislation, the CHR/UP believes that the Commission would require wide-ranging and extraordinary powers of search and seizure entrenched in the constitution in order to function effectively.

15.8 Assisting parties to redress wrongs:

The CHR/UP suggests that the power of mediation, conciliation and negotiation be specifically stated in the constitution.

There were differences expressed over the creation of a separate tribunal to enforce rights; the manner of referring matters to court and the question of financial assistance.

15.8.1 Most submissions were against the idea of a separate tribunal to enforce human rights claims. However, the ANC and Nadel felt that it may be necessary over time but should not be constitutionalised. LHR supported the idea. The DP suggested that an enabling clause should be inserted into the constitution to provide for an enforcement function.

15.8.2 Litigation: Most submissions supported the idea that the Commission could refer matters to court and engage in litigation in its own name or on behalf of an individual or group. The NP suggested that this be specifically stated in the constitution. However the ALS felt that the Commission should not take cases on behalf of an individual, only a group.

15.8.3 Financial Assistance: The FF argues that the provision for financial assistance is too ambitious and its limitation only to violations of human rights is not clear. HRC supports financial assistance to a party to bring proceedings.

15.9 Powers in relation to International Human Rights:

The current constitutional wording appears to limit the ability of the Commission to apply international human rights norms in respect of any proposed legislation. This is contrary to several submissions about the importance of international human rights norms, including

the ANC, FF, IFP, the CHR/UP and the LRC. Many submissions were silent on this point.

- 15.9.1 The ANC supported the application of international human rights norms to all activities.
- 15.9.2 The CHR(UP) states that 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.
- 15.9.3 The FF suggests that the words "which form part of South African law" (section 116-2) should apply not only to international human rights law but also to other relevant norms of international law mentioned in this subsection.
- 15.9.4 The LRC suggests a simpler and more complete wording in the Constitution:
 "In undertaking its activities, the Commission shall have regard to internationally accepted human rights".

Matters for legislation and structure of organisation of the Commission only:

16 Structure and Composition:

16.1 National/regional structure:

There was some discussion on how the Commission should organise itself nationally and regionally.

- 16.1.1 BLA recommends that every local authority should have an organ whose function would be to identify sources of disintegration and involve the community itself in solving the problems, with the personnel of the HRC convening and presiding over such meetings.
- 16.1.2 LHR emphasises that the Commission should have a high visibility in each region or province.
- 16.1.3 It was also stated that while the Commission would be a national commission to ensure that uniform standards are maintained countrywide, different commissioners can be allocated to different parts of the country. (CHR/UP).

16.2 Departments of the Commission:

There were also suggestions about internal organisation. Currin suggested that there is a need to create four forums which would cover the work of the Commission:

- 16.2.1 The law reform programme which would examine new legislation;
- 16.2.2 The human rights education promotion programme;
- 16.2.3 Public enquiries which would be aimed primarily at addressing socio-economic problems and fed through to government departments and
- 16.2.4 Tribunal and dispute resolution forums.

It was also suggested that the Human Rights Commission could have a specific forum that deals with gender issues so as to ensure that these matters are not marginalised from broader human rights issues (Currin). A distinction drawn between the HRC and Commission for Gender Equality was that the latter would not deal with the investigation or enforcement of complaints (LHR).

The GCB suggests that the Commission would function more efficiently if it were composed of separate but interrelated structures. They suggest that the Commission could contain a Dispute Resolution Forum to achieve conciliation in cases of dispute.

16.3 Relationship with CBO's/NGO's:

BS suggested that the Commission should work with the existing network of NGO's and CBO's in carrying out its functions.

16.4 Appointment of Commissioners:

Commissioners should be appointed in an active capacity and not only as trustees. The Chairperson and a number of commissioners should be appointed in a full-time capacity, with a number appointed part-time. Their periods of appointment should be staggered to ensure continuity.

17 The establishment of a Tribunal:

The main supporter for a tribunal was the LHR. The following reasons were cited:

- 17.1 the need to develop expertise in human rights and discrimination law;
- 17.2 the need to have a tribunal primarily concerned with the horizontal relationship;
- 17.3 hearings by Tribunals are less expensive, less formal and more accessible than court proceedings; and
- 17.4 a special tribunal could be made more representative in terms of class, race and gender.

18 Relationship with specialised structures of government

The majority agreed that there should be an independent Commission for Gender Equality.

19 Powers and Functions:**Investigative function:**

LHR recommends that the Commission should hold public enquiries to enable it to investigate and to report on socio-economic rights problems. Thus the power of public enquiry will also be important for the Commission especially for people who do not have access to financial or social resources to lodge complaints. The FF argues against the holding of public meetings. Most stakeholders felt that this was not enough to address the question of socio-economic rights.

Research Function:

There was support for the Commission considering the harmonisation of customary law and human rights (CLA, CHR/UP, Nadel). BLA felt that the Commission should play a role in identifying the needs of specific communities.