



8 October 2013

**OVERVIEW: SOUTH AFRICAN HUMAN RIGHTS COMMISSION (ANNUAL REPORT:
2012/13)**

1. INTRODUCTION

The mandate of the South African Human Rights Commission (the Commission), as contained in section 184 of the Constitution 1996, is broad. It must:

- Promote respect for human rights
- Promote the protection, development and attainment of human rights
- Monitor and assess the observance of human rights

In addition, the section also provides that each year the Commission must require relevant organs of state to provide information on measures taken towards progressive realisation of rights concerning housing, health care, food, water, social security, education and the environment.¹

The Commission also has powers and functions prescribed by specific legislative obligations in terms of the Promotion of Access to Information Act (PAIA) and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA). It must:

- promote awareness of the statutes;
- monitor compliance with the statutes;
- report to Parliament in relation to these statutes; and
- develop recommendations on persisting challenges related to these statutes and any necessary reform.

Currently, the Human Rights Commission Act 54 of 1994 gives the Commission powers to investigate and report; conduct hearings; subpoena an individual or institution; search and seizure; litigate on behalf of itself or a person or class of people and secure appropriate redress.² However, these powers are under consideration and may change following Committee deliberations in respect of the South African Human Rights Commission Bill [B-2013].

Internationally, the Commission is recognised as an 'A' status National Human Rights Institute (NHRI) in terms of the Office of the High Commissioner for Human Rights at the United Nations. The Commission must adhere to the Paris Principles which state that NHRI's should:

- Monitor violations of human rights
- Advise government, Parliament, and any other competent body on specific violations
- Educate and inform on human rights

¹ Section 184 of the Constitution, 1996

² Human Rights Commission Act 54 of 1994



- Use quasi-judicial powers where these exist.

2. OPERATIONAL OVERVIEW

The previous financial year 2011/12 marked the start of a three year '*organisational re-structuring and renewal process*' which was initiated in response to a strategic decision to focus on streamlining the Commissions complaints handling mechanism (for instance provincial offices lacked the necessary resources and skills to manage and investigate complaints³); apply a revised organisational structure to improve effectiveness and establish a better performance management system.⁴

The strategic plan provided that the 2012/13 financial year would establish the Commission as '*a focal point for human rights*'. It commenced with the appointment of a new management team to the revised structure and certain critical management posts were filled, including the Chief Financial Officer and Chief Operations Officer. The restructuring and filling of posts is apparently almost complete. Ongoing efforts have been made to improve the electronic Flowcentric complaints mechanism and there has been training on litigation. A Performance Monitoring and Evaluation Framework and Plan was developed in 2012/13 for implementation in 2013/14.

It has been a challenging year for the Commission and certain of the issues that have arisen over this period include:

- **A qualified audit report.** The Auditor General has given the Commission a qualified audit for the 2012/13 financial year which marks a regression from previous years. It is a concern that certain fundamentals in respect of financial governance appear not to have been monitored effectively by the institutions leadership. The qualification relates to accounting system changes which were not properly managed and failures to ensure a complete and accurate asset register.
- A strategic priority for 2012/13 was the protection of human rights through speedy and effective complaints handling. **In 2012/13 the target for this important indicator was not met.** Against a projected target of 85% the Commission finalised 79% of total complaints and enquiries. The number of cases carried over to 2013/14 also increased compared with the previous year. (The Commission reports that the failure to meet the target is due to an underestimation of the time it would take to update the electronic complaints flowtronic system. As well as the impact of the freezing of posts.⁵) In 2011/12 the Commission achieved an 87% complaints finalisation rate.
- **Human resources issues.** This is a consequence of the restructuring exercise. This includes litigation by disgruntled employees. The state of flux instigated by the restructuring process inevitably influenced the institutional culture. The Commission retrenched seven of its employees who were not directly placed during the restructuring process and is involved in litigation in response to this. It reports that an unfair dismissal case was lodged with the Commission for Conciliation, Mediation and Arbitration (CCMA). The matter went for conciliation on 13 May 2013, but could not be resolved and the case will be taken to the

³ Strategic Plan 2011-2014 p11

⁴ The period 2013/14 is described as the final year of this process and will mark a time of 'consolidation.'

⁵ AR 2012/13 p29



Labour Court.⁶ The Annual report notes a 'retrenchments contingent liability' of R8.3 million.⁷ Other human resource issues with a potentially detrimental effect on the institution concern the freezing of 13 posts, amounting to R5.9 million, most of which were in the Research and Human Rights Advocacy programme. This has impacted negatively on the Commission's promotion and monitoring mandates.⁸

- **Budget constraints.** The Commission's budget for 2012/13 was R101.5 million and the allocation for 2013/14 was R115.9. (The Commission has argued that it requires an 'ideal budget' of R148 million for 2013/14 for the institution to be able to function effectively.) The Commission has been agitating over this period of review for additional funding. The Chairperson of the Commission states in the Annual Report 2012/13 that:

*'the Commission needs more resources to grow its services across the country and particularly in rural areas. Our inability to regularly visit rural areas in provinces such as the Eastern Cape, limits our ability to properly assess the current state of access to basic education in the province for instance. From the little we have seen thus far, the situation is bleak. We have raised our limited financial resources with the Portfolio Committee on Justice and Constitutional Development, the Speaker of the National Assembly and the Minister of Finance, among others. Despite Parliament's powers in terms of section 5(3) of the Money Bills Procedure and Related Matters Act, there appears to be no action taken by Parliament on National Treasury's failure to implement Parliament's recommendations in respect of the SAHRC's budget...the Portfolio Committee recommended that the SAHRC be provided with additional resources totalling R37,35 million. Instead of implementing the recommendations of the Report, National Treasury provided the SAHRC with a total of R6 million in additional funding. As a result, the Commission has been forced to scale down its work, leaving Commissioners in a rather unenviable position.'*⁹

Comment

- The Commission may need to provide a detailed audit action plan in light of its unqualified audit for 2012/13.
- In its 2013 Budget Report the Portfolio Committee acknowledged the difference between the SAHRC's ideal budget of R148 million and that, despite receiving an additional R24 million over the medium term as a result of the Committee's intention in the BRRR, the SAHRC's allocation for 2013/14 constrains its ability to deliver on its mandate. The Committee felt strongly that the SAHRC's request should be taken further and intended approaching the parliamentary budget office in this regard.¹⁰
- Can the Commission provide a status update on the Labour Court matter involving the seven retrenched employees? Is the matter still ongoing? Are these seven posts part of the 13 posts that have been frozen because of budgetary constraints? Why does

⁶ Ibid p113

⁷ Ibid

⁸ BRRR 2012

⁹ SAHRC AR 2012/13 p10

¹⁰ Report of the Portfolio Committee on Justice and Constitutional Development on Budget Vote 24: Justice and Constitutional Development, dated 28 May 2013



the Annual Report indicate there were three retrenchments for the period when it seems there were seven retrenchments?¹¹

3. KEY ACTIVITIES

The key activities with which the Commission has been involved over the review period include:

- Provincial hearings across the country on access to water and sanitation culminating in a national water and sanitation hearing during Human Rights Month in March 2013.
- Developed and launched a Charter on Basic Education Rights, which has been hailed by the United Nations (UNICEF) as the most comprehensive charter in the world.¹²
- Litigation against the:
 - Gauteng Provincial Government to prevent the demolition of houses in Lenasia. (This led the Minister for Human Settlements intervening and convening a task team to resolve the matter.)
 - Minister of Home Affairs as a result of the treatment of foreign nationals at the Lindela Repatriation Centre. Based on investigations conducted in collaboration with our civil society partners, we discovered that foreign nationals were being held for longer than the legislation prescribed.
- Phased involvement in the Marikana Commission of Inquiry, with the assistance of the Centre for Applied Legal Studies (CALS).
- Compilation of an Equality Report which was handed over to the Ministry for Women, Children and People with Disability. The Report considers the state of equality in the country, looking particularly at issues of racism, gender equality, disability and LGBTI (Lesbian, Gay, Bisexual, Transgender and Intersex) rights.
- Chairing the Network of African National Human Rights Institutions (NANHRI) – a continental network of all African human rights commissions.
- Appointment of the Chairperson of the Commission as the Chairperson of the International Coordinating Committee (ICC) of all national human rights institutions. The first time that such an honour has been bestowed on an African state. (Funding was provided by the Department of International Relations and Co-operation.)
- Finalisation of 7047 complaints (involving matters such as equality; right to dignity and privacy and freedom and security of the person).
- Prepared the draft Annual International Report as planned by the end of the financial year, for finalisation during 2013/14. This serves to provide an annual overview of developments with respect to the work of international treaty bodies, and reflects on recommendations made in this regard.
- Hosted provincial hearings on illegal mining in the Northern Cape, as well as a roundtable discussion on illegal mining.
- Chaired the Forum for Institutions Supporting Democracy.
- Launched an investigation against the Correctional Services Department in a probe following riots at Free State's Groenpunt Prison.

¹¹ SAHRC AR 2012/13 p55

¹² Ibid p23



Comment

- Can the Commission elaborate on its funding for its legal representatives at the Marikana Commission? The Annual Report notes a commitment to pay R1.7 million to Adv Jele Advocates & G Malinda (Marikana).¹³
- The Commission indicated previously that it had engaged with Legal Aid South Africa on the possibility that it might assist the SAHRC to conduct high impact litigation? Can the Commission provide a progress report?
- What oversight did the Commission undertake of refugee detention facilities during this period? Apparently the Commission decided not to take up the issue of the mandatory provision of lists of refugees in refugee detention centres to be given to Lawyers for Human Rights.
- Has the Commission undertaken any oversight into the detention of psychiatric inmates in psychiatric detention centres?
- Can the Commission report on the activities of the Equality Review Committee?

4. BUDGET OVERVIEW

The Commission was allocated a budget of R101.5 million for 2012/13. The allocation for the Commission over the medium term is as follows:

Table 1: Budget allocation (MTEF)

Programme	Budget				Nominal change %		Real change %	
	2012/13	2013/14	2014/15	2015/16	2012/13 2013/14			
R million								
SAHRC	101.5	115.9	125.1	133.1	14.19 per cent		8.13 per cent	

The Commission reports that:¹⁴

- It spent 97% of its budget for 2012/13.
- The only programme that overspent was Administration.
- The Commissions key programme Promotion and Protection of Human Rights spent 93% of its budget.
- It received no donor funding for the 2012/13 financial year.

Comment

- In its 2013 Budget Report the Committee expressed alarm at the prospect that the SAHRC may need to close some of its provincial offices as a result of funding

¹³ SAHRC Annual Report 2012/13 p115

¹⁴ SAHRC AR 2012/13 p58



constraints and non-renewal of leases by DPW.¹⁵ (The Commission had to find money within its baseline allocation to fund leases for four of its provincial offices (at a cost of R1.41 million) since the DPW decided to transfer the accommodation cost to the Commission. (This Commission warns that this may lead to the closing down of provincial offices). Although a request was made to Treasury to transfer this money from the DPW. This was declined). Can the Commission provide an update on this matter?

- **Budget Review and Recommendation Report (2012)**

In the 2012 BRRR the Committee recommended that the Commission be provided with the following additional funds for the MTEF period:

Table2: Additional funding recommendation for SAHRC

Description (R'000)	2013/14	2014/15	2015/16
Legal Services			
Legal services human resources capacity for complaints handling	R12.3	R1.14	R1.14
Internal capacity building of legal practitioners	R1.5	R1.75	R1.75
Procurement of Experienced Legal Expertise for litigation of complaints	R1.5	R2.18	R2.18
Revamping Legal Case Management System	R2.13	R1.12	R1.12
Setting-up a call centre for complaints processing	R1.7	R1.84	R1.84
Human Rights Advocacy			
Developing Advocacy and Education capacity and materials	R1.6	R1.9	R1.9
Research			
Research reports, namely ESR, Equality and Focus Areas	R1.95	R2.14	R2.14
4. Promotion of access to information			
Monitoring, compliance and advocacy of PAIA	R6.7	R2.7	R2.7
IT Infrastructure			
	R3.43	R1.7	R1.7
Total	R32.81	R16.4	R16.4

In addition, the following items were identified as requiring additional funding during the BRRR process:

- Commissioner's travel – R2.21 million for 2013/14; R2.43 million for 2014/14 and R2.67 million for 2015/16.

- **Additional allocations**

National Treasury provided additional funding (in the 2013 budget) of R24 million over the medium term as follows:

	2013/14	2014/15	2015/16
Additional funds	R6 million	R8 million	R10 million

¹⁵ BRRR 2012



- **Impact of budget constraints**

The Commission contends that this is inadequate and that budgetary constraints continue to hinder the Commission's ability to:

- Appoint 100% of the Secretariat required for the new organisational structure;
- Thoroughly investigate matters, particularly in rural areas and districts that are located far from the Commission's provincial offices;
- Effectively reach a wider audience through outreach programmes;
- Harness technology to increase capacity and organisational performance; and
- Improve accessibility to cater for the needs of people with disabilities.

Comment

- The Commission proposed the idea of sharing accommodation (national and provincial precincts for Chapter 9's and entities such as Legal Aid South Africa) as a possible cost-saving measure and a feasibility study was to be conducted (by DPW and National Treasury). Can the Commission indicate whether this proposal has been taken any further?

5. STRATEGIC FRAMEWORK

The pressure of budget and other resource constraints led the Commission to review its strategic plan. The strategic plan encompasses the period 2012-2015, identifying the following five strategic outcome-orientated goals;

- i. Improve the quality of complaints handling;
- ii. Improve the quality of monitoring, evaluation of and reporting on the realisation of human rights;
- iii. Inculcate a culture of human rights through human rights advocacy;
- iv. Strengthen organisational effectiveness and efficiency; and
- v. Improve communication and stakeholder engagement.

To achieve these goals, the Commission set out six strategic objectives:

- i. Promote compliance with international obligations;
 - ii. Position the Commission as the focal point for human rights in South Africa;
 - iii. Strengthen advocacy and human rights awareness raising;
 - iv. Advance the realisation of human rights;
 - v. Advance the right to equality and access to information; and
- Improve the effectiveness and efficiency of the Commission

5.1 Adjustments to Annual Performance Plan 2012/13¹⁶

The Commission reported that certain adjustments were made to the Annual Performance Plan for 2012/13 (amended and new indicators).¹⁷

¹⁶ As submitted on 9 November 2012.



Table 3: Adjustments to the 2012/13 APP

INDICATOR	ORIGINAL TARGET	ADJUSTED
Strategic objective 1: Promote Compliance with International Obligations		
International and regional activities	7	9
NANHRI, ICC and ACHPR activities	10	19
Publish Annual Report by March 31	Publish the Annual International report by 31 March	Draft Annual International Report complete by 31 March 2013
Strategic Objective 2: Position the Commission as a focal point for human rights in South Africa		
Stakeholder engagements	54	72
Stakeholder collaboration systems: including MOU's	Revised and improved stakeholder collaboration systems by 31 March	Register of Memoranda of Understanding by 31 March
Litigation strategy approved (<i>New</i>)	-	Approve litigation strategy by 31 March
Media engagements	40	80
Strategic Objective 3: Strengthen advocacy and human rights awareness		
Right to food <i>conference</i>	Delivered by 31 March	Right to food <i>workshop</i> delivered by 31 March
Strategic Objective 4: Advance the realisation of human rights		
Consolidated Annual Monitoring and Evaluation Report Published	Consolidated Annual Monitoring and Evaluation Report Published by 31 March	Monitoring and Evaluation Plan Approved by 31 March
One section 184(3) Report by 31 March	One section 184(3) Report by 31 March	Draft section 184(3) report completed by 31 March
ESR Matrix by 31 March	ESR Matrix by 31 March	Draft ESR Matrix for 2 ESR Areas by 31 March
Strategic Objective 5: Advance the right to equality and right to information		
1 Equality Report completed and published	1 Equality Report completed and published by 31 March	Draft Equality Report completed by 31 March
Strategic Objective 6: Optimise the efficiency and effectiveness of the Commission		
Quarterly performance reports submitted to Treasury (<i>New</i>)	-	Quarterly performance reports submitted to Treasury
100% implementation of records management and strategy and systems for all programmes	Implement records management and strategy and systems for all programmes by 31 March	Review records management policy and plan and implement 35% of the plan by 31 March

6. PERFORMANCE OVERVIEW

Overall achievement rates in meeting targets have shown a significant improvement from 69% (2010/11) to 89% (2011/12.) The Commission set a planned target of 100% for 2012/13; however, the Commission recorded an 84% achievement in programme targets for 2012/13 which

¹⁷ Commissioners approved various amendments to the Annual Performance Plan for 2012/13 during the mid-term review meeting held on 30 October 2012. These changes relate primarily to the increase in performance targets due to various efficiencies that have been achieved across the Commission.



marked a decline from the previous year. According to the Commission failure to meet the target was a result of instability from restructuring and repositioning, as well as budgetary constraints.¹⁸

6.1 Promote compliance with international obligations (Strategic Objective 1)

The Commission met and/or exceeded all five targets set for this strategic objective.

The Commissioners participated in 44 international and regional activities, including the ICC, Network of African National Human Rights Institutions (NANHRI), and the African Commission on Human and Peoples' Rights (ACHPR) conferences and meetings. These engagements included the 5th Conference of the State Parties to the Convention of the Rights of People with Disabilities (CRPD) in New York. The outcome of the conference was a unanimous agreement that the Commission be designated as an Independent Monitoring Mechanism in terms of Article 33(2) of the CRPD. This commitment was further emphasised and agreed to by Parliament in November 2012.¹⁹ In addition the Commission's work on children was incorporated into the UNICEF Report on Championing Children's Rights.²⁰

To ensure that resolutions from these interactions are not lost, the Commission has drafted an Action Plan on International and Regional Obligations, which is currently under consideration for phased implementation in the future. It is unclear when this will be operationalised.

Comment

- Can the Commission comment on the state of South Africa's country reporting on international and regional treaties?

6.2 Position the Commission as the focal point for human rights in South Africa (Strategic Objective 2)

As its human rights focal point, the Commission dedicated the year 2012/13 to basic services, in particular the rights to water and sanitation.

The Commission achieved nine of eleven targets (82% performance rate) in respect of this strategic objective. Provincial and national hearings were held and a report compiled.

The Commission has increased its media statements/alerts to improve its visibility and during 2012/13 exceeded its target of 80 by disseminating 363 media statements/ alerts.

- **Complaints handling**

A key element of this objective is the quality and integrity of complaints handling. The Commission began implementing its new complaints handling system in 2011/12 and further work was done during 2012/13 to upgrade the flowcentric complaints system.

¹⁸ SAHRC Annual Report 2012/13 p56

¹⁹ Ibid p19

²⁰ Ibid



Table 4: Caseload 2012/11 – 2012/13

YEAR	OLD	NEW	TOTAL	% CHANGE	FINALISED	%FINALISED	CARRIED OVER	% CARRIED OVER
2010/11	2460	7910	10370	-4%	7499	72%	2871	28%
2011/12	2871	8492	11363	9%	9851	87%	1512	13%
2012/13	1247	7672	8919	-27%	7047	79%	1872	21%

The general statistics reveal the following:

- The target set for total complaints and enquiries finalised as per standard procedures and within timeframes for 2012/13 was 85%. The Commission's actual achievement was 79% (which is the same finalisation rate as 2011/12.)
- There was a caseload of 8919 cases in 2012/13 which is a **decrease** of 27% in the caseload compared with 2011/12 (11363). (7672 cases new cases were registered in 2012/13 as compared with 8492 in 2011/12).
- 79% (7047) of cases have been finalised in 2012/13 which is a **decrease** of 7% from 2011/12.
- The number of cases carried over to 2013/14 has increased by 21% from those carried over in the previous year. (The Commission contends this is a consequence of challenges such as the consequences of restructuring and freezing of posts.)

A provincial breakdown reveals that:

- The province with the highest intake of cases (total complaints and enquiries) is Gauteng, followed by Western Cape, KwaZulu-Natal and Northern Cape
- Northern Cape finalised 90% (788 of 873) of the cases investigated followed by KwaZulu-Natal at 88% (1084), Eastern Cape at 84% (540 of 645), the Free State at 83% (525 of 635) and Gauteng at 83% (1 782 of 2 154).
- Limpopo finalised 51% of the cases (the Annual Report notes that the Limpopo Provincial office has no senior legal officer); Mpumalanga 59% (no legal officers) and the North West 72%.

The top 5 complaints that were finalised by the Commission in the fourth quarter were mainly in the area of Just Administrative Action (14%), Equality (13%), Labour Relations (13%), Arrested, Detained and Accused Person (12%) and Human Dignity (8%).

The Commission reported that it was considering the process of rolling out a child friendly complaint procedure. Upon its launch, children would be enabled to approach the Commission directly and lodge complaints in their own rights. There was a need to train personnel on the process of receiving children's complaints, however, funding constraints posed a challenge.

Comment

- Over 2012/13 the Commission appears to have made significant efforts to increase its public profile (increased media coverage for improved visibility) yet there has been a decrease in new cases. Can the Commission suggest reasons for this?



- There was a 27% increase in cases being carried over. Can the Commission suggest reasons for this?
- The Commission reports that corrective measures to improve complaints handling will be undertaken by senior management. Can the Commission provide a progress report? These measures will include:
 - Holding provincial offices more accountable through generating various investigative reports and continuous performance assessment.
 - Provincial visits by the Chief Operations Officer and Head of Legal Services will be undertaken to assess provincial challenges and develop performance improvement plans.²¹
- Limpopo finalised 51% of the cases (the Annual Report notes that the Limpopo Provincial office has no senior legal officer) and Mpumalanga 59% (a senior legal officer but no other legal officers). What action is the Commission taking to assist these offices to improve their case finalisation rate?
- Does the Commission receive many complaints about the conduct of SAPS officers that should perhaps be resolved by the Independent Police Investigative Directorate (IPID)? If so has it engaged with IPID?
- A litigation strategy was developed during 2012/13 and was to be implemented in 2013/14. (Increased use may be made of the Commissions 'subpoena powers' especially in respect of Departmental responses to the annual s184(3) Economic and Social Rights (ESR) report.) What impact has this strategy had on the Commissions approach to litigation in 2013/14?
- Can the Commission report on its equality court matters? The Commission for Gender Equality released a Court Monitoring Report (March 2013) that noted that *'equality courts are not popular, they are not being marketed adequately, little is known about the jurisdiction of these courts by practitioners and the public and there is a lack of dedicated presiding officers and clerks.'* The Commission recommended that a dedicated campaign be undertaken by the Justice Department to popularise, brand and market the equality courts (subject to monitoring and evaluation by the Equality Review Committee.)²²
- Can the Commission elaborate on its plans for human rights clinics – which are to be 'rolled-out' in 2014/15? These clinics are intended to be a key feature of the Commission (integrating stakeholder engagements, complaints handling, advocacy and research.)

6.3 Strengthen advocacy and human rights awareness raising (Strategic Objective 3)

The Commission achieved five of the seven targets of this strategic objective (a 71% performance rate).

²¹ Ibid

²² Commission for Gender Equality, Court Monitoring report, (1 April 2012 – 31 March 2013)



Contribution to this strategic objective includes hosting Conferences to engage on topical human rights issues, as well as materials development to promote awareness. The main contributing units are the Commissioners' Programme and the Human Rights Advocacy. The Commission reports it had to reduce its target for provincial events to 9 in 2012/13 from 19 in 2011/12 because of budget constraints.

The two indicators where the Commission did not meet its targets concern the printing of the acid mine drainage booklet, as well as the hosting of the Conference on the Right to Food. Delayed production of the booklet was due to procurement challenges. The Conference on Right to Food was subject to availability of donor funding, which could not be secured. The plan has subsequently been moved to 2013/14 for implementation.²³

6.4 Advance the realisation of human rights (Strategic Objective 4)

All the targets (five of five) that were planned in the period under review with respect to the drafting of research reports and the targeted monitoring and evaluation plan were realised.

The objective of advancing the realisation of human rights is carried through the Commission's constitutional mandate of monitoring the observance of human rights. This included the Economic and Social Rights Report and a Strategic Focus Area Report on Water and Sanitation.²⁴ By the end of 2012/13, the Commission drafted a Monitoring and Evaluation Framework and Plan to enhance performance assessment, with a view to improving performance in respect of its strategic objectives.²⁵

6.5 Advance the right to equality and the right to access to information (Strategic Objective 5)

The Commission achieved all the targets (14 of 14) it set in the period under review, This included completion of two key reports namely, an Equality Report and Promotion of Access to Information Report.

Comment

- Can the Commission provide a progress report on its work in these areas? Has the Commission held any pilot community sessions for PAIA law clinics?

6.6 Optimise the effectiveness and efficiency of the Commission (Strategic Objective 6)

The Commission achieved 11 out of 16 targets set for this strategic objective (a 67% performance rate).

²³ Ibid p45

²⁴ Ibid p48

²⁵ Ibid p49



The Annual Report notes, '*key highlights towards optimising effectiveness and efficiency of the Commission include compliance with all financial and non-financial performance reporting requirements, improvements in internal controls as well as good governance practices.*'²⁶ However, given the unqualified audit that the Commission received for 2012/13 it appears that insufficient attention was paid to internal controls and good governance in respect of financial performance.

The completion of the organisational structure by the end of 2012/13 stood at 83% against a target of 100%.

7. AUDITOR GENERAL REPORT

The Commission received a **qualified audit opinion**. The AG has identified a **regression** in its audit findings for the Commission.

The AG reported the following:

- The upgrading of the accounting software was not properly managed.
- The financial statements submitted for auditing were not fully prepared in accordance with the prescribed financial reporting framework. Material misstatements of current liabilities and expenditure identified by the auditors in the submitted financial statements were subsequently corrected and/or the supporting records were provided subsequently, but the uncorrected material misstatements and/or supporting records that could not be provided resulted in the financial statements receiving a qualified audit opinion.
- Supply chain management regulations were not followed. Goods and services with a transaction value below R500 000 were procured without obtaining the required price quotations
- Irregular expenditure amounting to R1.19 million was incurred in the 2012/13 financial year.
- Asset management was ineffective.
- IT governance issues – no IT strategic plan in place
- Leadership The leadership of the entity did not exercise adequate oversight responsibility regarding financial reporting and compliance with laws and regulations as well as related internal control.
- Financial and performance management. The entity did not have a proper filing system that provides for the maintenance of information that supports reliable financial reporting.
- Management did not implement effective controls throughout the financial year over the management of assets and recording of supplier invoices.
- Management did not prepare accurate and complete financial reports that were supported.

Comment

- The AG indicated that the Commission should implement an audit action plan to remedy the problems. Urgent action is needed by the Institutions senior management. The Commission should ensure the following:
 - A commitment for quarterly asset counts (quarterly asset verifications should be submitted to the accounting officer.)

²⁶Ibid p53



- creditor listings as to whom is owed what
- a more intensive interim audit
- effective controls (monthly verification exercises) at the provincial offices (the challenges identified were at the provinces (the AG notes that senior finance and other officials from head office needs to check this)
- supply chain management officials must be trained
- Has the Commission taken any disciplinary steps against the officials concerned?
- What monitoring controls were in place in terms of the work done by the Audit Committee/Internal Audit? The Audit Committee noted in the Annual Report that issues identified in the prior year had not been resolved. (Assets were not adequately managed; Performance/capacity of IT systems not monitored and reported on; and User access management controls not adequately designed on Pastel.)²⁷ The Audit Committee also identified the following areas of concern during 2012/13: Non-compliance with complaints handling procedures relating to prescribed timelines and communication regarding complaints Incorrect or incomplete complaints reports Inadequate Monitoring and Evaluation (M&E) procedures Inadequate IT security and IT governance Inadequate application controls (VIP Payroll and Pastel) Inadequate fraud and risk management procedures Inadequate record management relating to the maintenance and the safeguarding of records Incorrect or incomplete asset register Audit findings raised not timeously resolved.²⁸

8. HUMAN RESOURCES

The Commission continued with the finalisation of the organisational restructuring process. Although the organisational structure consisted of 178 approved posts in the period under review, 13 of these posts were frozen due to a lack of adequate budget to fill the structure. As a result, the Commission filled 147 of the 165 posts (89%) that were funded. The following may be noted: a vacancy rate of 17% (as against a vacancy rate of 29.05% in 2011/12); 12 people resigned during 2012/13 and an annual turnover rate of 14.95% (as against a turnover rate of 16.6% in 2011/12.)

9. LOOKING AHEAD TO 2013/14

In April 2013 in its presentation on its Strategic Plan (Year Three) and Annual Performance Plan (2013/14) the Commission indicated that in addition to complaints under investigation on the one hand, Commissioners took a decision to undertake 6 investigative projects under their lead. These investigative projects seek to enhance the Commission's protection mandate and are in the following areas:

- National Investigative Hearings into the status of delivery of primary learning materials (Commissioner Mokate: Investigation is currently underway.)
- National Investigative Hearings into the treatment of Older Persons in Old Age Homes (Commissioner Malatji: Hearings planned to take place on 11 June 2013.)

²⁷ Ibid p86

²⁸ Ibid



- National Indaba's on the Rights of Persons with Disabilities (Commissioner Malatji: to be rolled out provincially over 2013/4)
- National Investigative Hearings into Illegal Mining. (Commissioner Love Hearings planned to take place in July 2013.)
- National Hearings into Water and Sanitation (Commissioner Govender: Hearings were held in March 2013.)
- National engagements with South African Police Services (National Commissioner & Provincial Commissioners) on systemic causes of police brutality and options for change. (Commissioner Mushwana and Commissioner Titus Engagements are currently underway.)

During 2013/14 the Commission reports it will focus resources on:

- Protection of human rights – through speedy and effective complaints handling
- International, regional and local obligations(ICC Chair duties and NANHRI and ACHPR duties)
- Consolidated and sustained performance levels
- Capacity building and infrastructure development
- Improved planning processes

Sources

ENE 2013

Human Rights Commission Act 54 of 1994

SAHRC Annual Report 2011/12

SAHRC Annual Report 2012/13

