



**COUNCIL**  
FOR THE ADVANCEMENT OF THE  
**SOUTH AFRICAN**  
**CONSTITUTION**

Dr MS Motshekga  
Co-Chairperson (NA)  
Joint Constitutional Review Committee

Mr EM Mthethwa  
Co-Chairperson (NCOP)  
Joint Constitutional Review Committee

**For attention:** Adv P Gwebu  
**Per email:** [pgwebu@parliament.gov.za](mailto:pgwebu@parliament.gov.za)

Dear Adv Gwebu

#### **SUBMISSION ON THE ANNUAL REVIEW OF THE CONSTITUTION**

1. The Council for the Advancement of the South African Constitution (CASAC) is pleased to make this submission in response to the Call for Submissions issued by the Committee on 23 May 2021.
2. This submission will propose a fundamental change to the structure of Chapter 9 of the Constitution.
3. Chapter 9 establishes, among others, the following institutions to support constitutional democracy:
  - a. the South African Human Rights Commission;
  - b. the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; and
  - c. the Commission for Gender Equality.
4. In addition to the institutions listed above, the Pan South African Language Board Act 59 of 1995, established the Pan South African Language Board which is contemplated in section 6 of the Constitution.
5. This submission is made on the basis of the *Report of the ad hoc Committee on the Review of Chapter 9 and Associated Institutions* ("the Asmal Report") which was submitted to the National Assembly on 31 July 2007.

Council for the Advancement of South African Constitution

Telephone: [+27 21] 685 8809 • Facsimile: [+27 21] 685 8819

[info@casac.org.za](mailto:info@casac.org.za)

[www.casac.org.za](http://www.casac.org.za)

6. The Asmal Report, recommended, among other things, the establishment of a single human rights body named the “South African Commission on Human Rights and Equality”.
7. To date, the National Assembly has not taken any concrete steps to implement the recommendations contained in the Asmal Report. This despite the Call for Written Submissions issued by the Office on Institutions Supporting Democracy (“the OISD”) in June 2017, a process in which CASAC once again participated.

## **THE ASMAL REPORT**

8. The Asmal Report recommended that a single human rights body be established, which body would comprise the Human Rights Commission, the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, as well as the Pan South African Language Board and the National Youth Commission (now the National Youth Development Agency established in terms of the National Youth Development Agency Act 54 of 2008).
9. This recommendation was informed by the committee’s view that there was an uneven spread of resources and capacities which affected the efficiency and effectiveness of Chapter 9 institutions as they currently exist. The current constitutional arrangements caused fragmentation and resulted in a duplication of approaches to the application of the Bill of Rights, which the committee found to be undesirable.
10. The Asmal Report was of the view that a single human rights body would address several of the issues the committee identified in its review. Among others, it would minimise the risk of duplication of roles due to overlap between the different institutions’ mandates, it would also optimise the use and allocation of financial resources and improve administrative efficiency. It would also be more accessible to the public, with a one-point-stop for the lodging and processing of complaints and ensure an integrated and interdependent approach to addressing human rights violations.
11. A single human rights body would also be directly accountable to Parliament which would ensure its independence and improve Parliament’s democratic oversight over independent institutions.

12. CASAC supports the findings in the Asmal Report and believes that its recommendations should be implemented with haste. To that end, CASAC makes the following proposals.

## **PROPOSALS**

13. The organisational structure of the Single Human Rights Body (SHRB) should not weaken the existing specialist focus of the separate institutions. Instead, the SHRB should have demarcated focus areas with an overarching governing structure for these areas. This would entail an approach to administrative consolidation of the different institutions into a leaner organisational model that would deliver quality output efficiently.
14. The SHRB, like the existing institutions, should have a prominent provincial and regional presence across the country. In particular, focus must be turned to the possibility of repurposing existing infrastructure that belongs to the existing institutions for the purposes of making the SHRB more visible to the public. More so, this focus should be directed to rural and peri-urban areas where members of the public are not particularly aware of the existence of the current institutions.
15. A mechanism for collaboration between the SHRB and other Chapter 9 institutions should be developed. Specifically, a referral system of complaints lodged with the inappropriate body to the appropriate one should be established instead of making the public undergo a whole new complaints process.
16. The SHRB should be independent from the executive and its independence should broadly be in line with the provisions of section 181 of the Constitution.
17. The present number of commissioners will need to be rationalised to find an optimal number of commissioners needed for the SHRB to execute its mandate effectively. In total, the legislative arrangements make provision for 58 commissioners and board members across the five institutions identified above. CASAC proposes that a process of natural attrition in transitioning to the new SHRB should be allowed to happen. This would entail not filling the vacant posts created by the expiry of the terms of the existing commissioners.

This would need to be balanced against the need for expertise in each area and allow for flexibility in that regard.

18. The process and criteria for the appointment of commissioners of the SHRB would need to be clearly defined against the agreed needs of the body. This would include a clear description of the areas of expertise and experience required for the SHRB to properly execute its mandate. This would also require that interviews and shortlisting of candidates be aligned with specified portfolios for which the expertise and experience are required.
19. The terms of appointment as commissioners of the SHRB would also need to be specified, including fixed-term tenure, taking into account the need for continuity. The appointment process should be an open parliamentary process which would encompass the appointment of the chairperson of the SHRB along with the selection of the commissioners with a final decision being taken by the National Assembly. No discretion should be vested in the President or any other member of the executive.
20. Remuneration of commissioners should be standardised in line with other state institutions in order to eliminate inconsistencies and disparities that currently exist.
21. Formal provision for the participation of civil society organisations in the appointment process should be made. The SHRB should seek to foster a collaborative relationship with civil society in order to assist and enhance the work of the SHRB.
22. The separate and distinct roles of the SHRB should be recognised. On the one hand, is the obligation to promote, respect, and protect human rights and to monitor the observance of human rights, and on the other hand is the obligation to vindicate individual human rights pursuant to a complaints process. Parliament should therefore consider what powers would be necessary for the SHRB to have in order to carry these roles out successfully.
23. The SHRB should have an explicitly proactive role, including:
  - a. public education and awareness on human rights;
  - b. promoting greater awareness of its existence as an avenue for the public to lodge complaints about human rights violations;
  - c. intervening in human rights violations once it becomes aware of them;  
and
  - d. making submissions to Parliament and provincial legislatures on the impact of proposed legislation on human rights and generally to enhance respect for and the protection of human rights.

24. An issue raised in the Asmal Report which would require attention is the allocation of roles between commissioners and administrative staff, which would impact the efficiency of the SHRB.
25. The relationship between Parliament and the SHRB should be clearly set out in terms of the appropriation of funds for its operations and Parliament's oversight role over it.

## **CONCLUSION**

26. CASAC believes that the recommendations in the Asmal Report are essential to the optimisation of Chapter 9 and associated institutions and that Parliament should move with some urgency.

Yours sincerely,

Lawson Naidoo

**EXECUTIVE SECRETARY**

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