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**REPORT OF THE PORTFOLIO COMMITTEE FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT ON THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION'S ANNUAL REPORT 2006/07**

Report of the Portfolio Committee on Justice and Constitutional Development on the Annual Report of the South African Human Rights Commission dated 13 February 2008.

The Portfolio Committee on Justice and Constitutional Development, having considered the Annual Report of the South African Human Rights Commission, reports as follows:

**1. Introduction**

- 1.1 On 6 November 2007, the Committee considered the 2006/07 Annual Report of the South African Human Rights Commission. The Committee was represented by the Chairperson of the Commission, Mr J Kollapen; the Deputy Chairperson, Ms Z Majodina; a Commissioner, Professor K Govender; the Chief Executive Officer, Advocate T Thipanyane; the Chief Financial Officer, Mr F Moloi; the Head: Information and Communications Programme, Mr S Hatang; Mr A Keet; and Ms J Cohen of the Parliamentary Unit of the Human Rights Commission. The Department of Justice and Constitutional Development was represented by Ms O Sewpaul.
- 1.2 In terms of section 181(5) of the Constitution, the state institutions supporting constitutional democracy are accountable to the National Assembly (NA) and must report on their activities and the performance of their functions to the NA at least once a year. While the Committee holds the Commission to account, we fully respect its independence as provided for in Chapter 9 of the Constitution.
- 1.3 The Commission recently participated in a parliamentary review of the state institutions supporting constitutional democracy. This was undertaken by the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions. The report of the Ad Hoc Committee contains a number of immediate and long-term recommendations. However, the report is still to be processed through Parliament and other structures. Our Committee will monitor developments in this regard closely.
- 1.4 This report on the Commission's Annual Report should be situated in the context of the Committee's 4<sup>th</sup> quarter 2007 programme, "Towards Finding a Necessary Balance between Our Legislative and Oversight Roles". The programme is based on our understanding that although we have a huge legislative workload, we have to find the time and space to play a more activist oversight role; that our legislative and oversight roles need to be complementary and reinforce each other.

- 1.5 Our main concern is to assess how the Commission has performed in each of its programmes, especially in terms of its Strategic Plan and particularly its specific targets for the 2006/07 financial year under review. As the Commission does not, at present, appear before the Standing Committee on Public Accounts, we have also paid some attention to the Commission's finances.
- 1.6 The approach in this report is to first provide an overview of the Commission's presentation on its Annual Report to our Committee, and then to offer our responses in section 6 of this report..

## 2. **Chairperson's Overview**

- 2.1 The Chairperson of the Commission said that the Commission "continues to focus on the advancement of equality" and on its "mandate relevant to the advancement of the socio-economic rights. Apart from the substantial socio-economic rights report we produce, we have regular visits to various urban and rural communities to assess their enjoyments of rights, particularly socio-economic rights, and have submitted reports to the relevant structures highlighting matters of concern and making recommendations". In May, the Commission concluded "the public hearing phase" of the inquiry into access to health care services. In November, the Commission also held an inquiry into evictions in respect of "privately owned and financed houses after receiving a number of complaints" in this regard.
- 2.2 The Chairperson said that the Commission "continues to take and argue cases before the Equality Courts but remains concerned that the regulations relevant to the promotional aspects of the Act have yet to come into force. Such regulations will provide a positive and supportive framework to promote equality through proactive measures which will complement the protective mandate of the Act. From the information before us, the Equality Courts are being under-utilised by those who are poor, especially in the rural areas".
- 2.3 The Chairperson said that Chapter 9 institutions were seeking greater co-operation and co-ordination through the Forum established. He reported that "a substantive meeting of these institutions was held recently under the auspices of the Commission and a further meeting of CEOs is being planned. While mandates, areas of foci and internal arrangements may differ, there remain many common areas where greater co-operation will not only benefit the various bodies but also provide an integrated and quality service to the public".
- 2.4 The Commission has continued with its international work and assisted other human rights institutions, including in Southern Sudan, Sierra Leone and Kenya. The Commission, the Chairperson said, has "increased our capacity to include the monitoring of South Africa's international treaty obligations, which will include the reporting obligations, matters relevant to ratification, as well as, where appropriate, appearing before the treaty bodies. We are currently

involved in popularising and arguing for the ratification of the Optional Protocol to the Convention Against Torture”.

2.5 He said that the Commission would like support from the Portfolio Committee on the following issues:

- The Human Rights Commission Act requires that there are a minimum of 5 full-time commissioners. At present, there are 4 full-time commissioners and 1 part-time commissioner. The Commission would like the remaining full-time commissioner to be appointed as soon as possible.
- The terms of office for all commissioners expire in September 2009. It is important that timely appointments are made to ensure continuity and a proper hand-over.
- The amendment of the South African Human Rights Commission Act, as well as the the regulations relating to staff remain outstanding.
- The Commission requests the Committee to consider the proposals of the Ad Hoc Committee on the Review of the Chapter 9 and Associated Institutions on the challenges in effectively implementing the Promotion of Access to Information Act, particularly the appointment of a dedicated Information Commissioner to the Commission.

2.6 The Chairperson said that despite the considerable strides the country has made, we still face formidable human rights challenges. This includes the “continuing inequality” and the “ongoing need to ensure that the promise of the Constitution to free the potential of each person and advance human development is made good”. “The Commission”, he said, “is well placed to continue its role as monitor, as facilitator, as educator and as agent for transformation. We will continue to do so as an independent institution but always mindful that our independence enjoins us to work with other structures and institutions, both State and non-State, in the discharge of that mandate”.

### **3 Performance in Terms of Programmes**

3.1 The Commission lists its strategic objectives as follows:

- To promote human rights and contribute to developing a sustainable culture of human rights, through education and training, community outreach and public awareness campaigns.
- To monitor human rights by providing comprehensive research and documentation mechanisms designed to advance and assess human rights, especially social and economic rights.
- To protect human rights by investigating individual and systemic complaints of human rights violations and provide appropriate redress.
- To entrench the Commission as the major resource and primary focal point for human rights promotion, protection and monitoring in the country.
- To be accessible and work in a collaborative manner with organs of state, civil society and other Chapter 9 organisations.

- To advance the public and parliamentary accountability of the Commission's work and maximise the utilisation of public resources through sound strategic management and efficient financial and administrative systems and procedures.
- To publicise and convey the role and work of the Commission to the general public via an integrated internal and external communications strategy.

3.2 The Commission highlighted a number of achievements during the period under review:

- An e-Learning programme was developed and is to be implemented. This programme provides access to human rights education on the internet and other multi-media tools. The e-Learning courses that are available online address the Promotion of Access to Information Act (PAIA); the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA); a Basic Course on the Promotion of Access to Justice Act (PAJA); and a Basic Course on Human Rights Education. There is also an induction portal on Basic Human Rights that introduces the work of the Commission.
- Public hearings were conducted on school-based violence and initiation schools. The hearings on initiation schools were held together with the Commission for the Promotion and Protection of the Rights of Cultural, Religious, Linguistic Communities, and the National House of Traditional Leaders.
- The Commission hosted the Information Officers Forum to contribute to the implementation of the Promotion of Access to Information Act (PAIA).
- A Golden Key Award ceremony was held to acknowledge successes in the implementation of PAIA.

3.3 Key challenges that the Commission faces include:

- The service delivery environment in which the Commission operates is complex and characterised by challenges that include poverty; unemployment; HIV and AIDS; violence, particularly against women and children; and crime. These factors increase the need for the Commission's services and create capacity challenges.
- The vastness of the South African landscape restricts the Commission's ability to promote a culture of human rights in all parts of the country in a sustained manner. The Commission is exploring new ways to promote human rights. For example, the formal education system and electronic channels will be employed to promote a culture of human rights.
- The number of alleged human rights violations that are brought to the Commission's attention is overwhelming. The Commission is modernising its systems to deal more effectively with complaints. The Commission is also using both judicial and alternative dispute resolution means to resolve complaints.
- Closer co-operation and collaboration with other Chapter 9 and related institutions remains a challenge.

3.4 In the case of the Commission's Programme 1 on Commissioners, six of the seven targets were achieved. The target not met was in the area of human

rights policy development, as no human rights policies were developed. The role of Commissioners is, amongst others, to: foster relationships with national, regional and international role-players; contribute to policy development and strategy for the Commission; and exercise corporate governance and oversight of the activities of the Commission. Among the achievements in this programme:

- In order to raise the Commission's profile, Commissioners briefed Parliamentary committees on their work, as well as made inputs into legislation (such as the Civil Unions Bill) and participated in Parliament's Equality Review Process.
  - Commissioners have provided guidance on two significant inquiries, the inquiries into initiation schools and into school-based violence.
  - Commissioners have undertaken visits, on a regular basis, and intervened in human rights situations countrywide. These include regular visits to senior citizens' clubs; meeting with traditional leaders and community leaders in Sekhukhune on conditions in hospitals and clinics, as well as on the quality of the police services and the provision of water; and, in Mafefe, the issue of asbestosis was addressed.
- 3.5 In Programme 2: Chief Executive Officer, all targets were met for the sub-programmes Strategic Management; Financial Management; Parliamentary Liaison and Legislation Monitoring; and Media and Communications. The sub-programme: Special Programmes met its targets, except in the area of research, where it was reported that targets were only partially achieved. Also:
- The Commission has outsourced its internal auditing function. However, this will be downscaled from next year as it is too expensive and the Commission only receives reports every six months. The Commission will employ an internal auditor and a Deputy-Director for Monitoring and Evaluation.
  - The Parliamentary Unit is responsible for parliamentary liaison and legislation monitoring. In 2006/07, the Unit was actively involved in preparing for, and participating in, the proceedings of the Ad Hoc Committee on Chapter 9 and Associated Institutions. The sub-programme also made 15 parliamentary submissions in the period under review, including submissions on the Sexual Offences Bill, the Civil Unions Bill, the Film and Publications Amendment Bill, the Social Housing Bill and the Prevention and Treatment for Substance Abuse Bill. The Unit briefed a number of parliamentary committees on violence and vulnerable groups, equality courts, farm dweller evictions, and the right to basic education. In July 2006, the Commission hosted a school-fees dialogue that included government and representatives from civil society.
- 3.6 In Programme 3: Corporate Services, all targets for the sub-programmes Administration and Information Technology were met. However, the reduction of an insurance premium, to R250 000 per annum, in line with existing Treasury regulations, is a challenge. Such a reduction has meant that the Commission is underinsured. This is a particular concern given the recent spate

of burglaries in which goods far in excess of R250 000 have been stolen from the Commission's offices.

3.7 In Programme 4: Operations, the Commission performed well above its targets for most of the sub-programmes:

- For Education and Training, the Commission has established innovative and creative approaches to human rights' education to enhance access to human rights. As previously noted, the Commission has developed an e-Learning programme and training packages. This programme will be launched in January 2008.
- The Advocacy, Public Awareness and Community Outreach initiative has focussed its efforts on reaching rural communities.
- Legal Services provides legal services and investigates allegations into human rights abuses. Aspects of its work involve complaints handling, litigation (including cases in the Equality Courts) and holding public hearings. Selected achievements include:
  - ❖ The Commission received 11 867 complaints. This figure refers to complaints carried over from previous years and new ones received. Of these, 438 complaints were resolved, 18 were litigated upon and 2 systemic types of complaints were converted into public hearings (initiations and school-based violence). In addition to the 438 cases resolved, a further 1 968 cases were finalised (which means that the files were closed as the complainant did not wish to take the matter further) and 2 251 cases remain outstanding.
  - ❖ The target of appointing and training of candidate attorneys was only partially achieved as the relevant policy was developed but not implemented because of financial constraints. In the current financial year, however, the Commission has appointed two candidate attorneys as a pilot project at the National Office, and it is intended that this project will be rolled out to the provinces.
  - ❖ The Commission assisted complainants/litigants in 20 matters before the Equality Courts.
  - ❖ The Commission provided assistance to complainants in 59 PAIA appeals.
- The sub-programme: Research and Documentation has experienced difficulties in terms of staffing. The Commission is addressing this by restructuring.
  - ❖ Regarding PEPUDA matters, the target in respect of section 28 Equality Reports was not achieved because the regulations in terms of the Act have not yet been promulgated.
  - ❖ On PAIA matters, the target in respect of section 32 Reports could not be achieved as not all public bodies submitted these reports. This is particularly problematic at the level of local government.

3.8 In terms of Programme 5: Special and Donor-Funded Projects, the Commission reported that it achieved the following:

- **Civil Society Advocacy Programme:** The aim of this programme is to facilitate the access of vulnerable groups to their constitutional rights by providing mechanisms for advocacy, communication, awareness and engagement between communities, community structures, civil society organisations and government. Highlights of this programme include a community profiling study which provided valuable baseline information to inform the Commission's Advocacy and Outreach programme; compilation of a database of civil society organisations; a review and assessment of the Commission's organisational capacity; and the upgrading and review of management systems through the Norms and Standards handbooks.
- **Community Outreach and Advocacy ("Comout"):** This programme is aimed at interacting with disadvantaged and marginalised communities, with the Eastern Cape, Limpopo and KwaZulu-Natal being priority provinces. The programme began in January 2007 and 11 interventions were made by the end of the reporting period.

#### **4. Human Resources**

- 4.1 The Commission reported a staff complement of 107 out of 129 funded posts. This is a relatively high vacancy rate of 17.05%. A high vacancy rate (20% and above) exists in the Research, Education and Provinces programmes. Vacancy rates in critical occupations such as Legal, Training and Research is 25%.
- 4.2 The Commission had a staff turnover rate of 16.34%, with high turnover in higher salary bands. The highly-skilled supervision band (Level 9-12) had a turnover rate of 28%, Senior Management Service Band A 20%, and Senior Management Service Band B 20%. In terms of critical occupations, Research had a turnover rate of 34.61%, with an overall rate of 20.33% in critical occupations. Of the 17 people who left the Commission, 16 had resigned and 1 was dismissed for misconduct.
- 4.3 The Commission has met employment equity targets in all but Top Management. A breakdown of the Commission's staff complement reveals that 64% of the Commission's employees are female. Africans comprise 89.5% of employees. In Top Management, however, women make up only 16.7% of employees. All these women are African. With only one employee with disabilities, the Commission has not met its employment equity target in this regard. The Commission, however, reported that it is addressing these problems by putting in place systems and procedures to ensure that it attracts female employees to senior management positions. The Commission has revised its recruitment policies and is currently finalising its Employment Equity Plan.

#### **5 Financial matters**

- 5.1 In the 2006/07 reporting period, the Commission was allocated R 49 220 000. The total income for the year, with donations, was R 49 477 037 and the total expenditure was R 45 574 082. A surplus of R 4 592 563 was accumulated at the end of the reporting period. These surplus funds were committed to pay suppliers for items purchased during the reporting period.
- 5.2 The reason given for the under-spending of 3% was the unforeseen staff turnover and a very high vacancy rate of budgeted posts in programmes. The National Treasury approved the roll-over of surplus funds in order to pay the outstanding commitments, while R 947 359 was retained to purchase computers and servers that were stolen when the Commission suffered a burglary. R 557 434 was returned to the National Treasury.
- 5.3 The Report of the Auditor General for 2006/07 indicates the Commission received an unqualified audit report. Attention, however, was drawn to certain ancillary matters. These included:
- Non-compliance with rules and regulations due to a lack of monitoring or compliance with policies and procedures, as well as poor governance structures.
  - The Commission had not complied with National Treasury Regulations that insurance expenses may not exceed R250 000. (This was subsequently rectified.)
  - Prior approval was not obtained from National Treasury to update the financial system.
  - Separate annual financial statements for trust accounts were not prepared.
  - The Audit Committee failed to evaluate the performance of the internal audit for the financial period under review.
  - A material correction was made to the financial statements after expenses were initially overstated by R 7 531 189.

## **6. Committee's Response**

- 6.1 Overall, given the structural, resource and other constraints, the Committee feels that the Commission is performing well and commends it on its good work. We are particularly impressed by the Commission's activist approach to the promotion and protection of human rights.
- 6.2 It is commendable that the Commission has achieved most of its targets and in some cases exceeded them. The Committee suggests that it is possible that these targets were set lower than they should have been; in any case, the Commission might want to consider setting higher targets in future. The Committee finds it difficult, however, given the way the Annual Report records the statistics, to evaluate the Commission's success in processing complaints. This is dealt with further in sections 6.14 and 6.15 below.
- 6.3 The Committee welcomes the Commission's work on initiation, school violence, the position of refugees and other non-nationals, and health care, and is interested to



see this work processed through engagement with the relevant decision-makers to achieve material outcomes.

- 6.4 The Committee is interested in the Commission's work on socio-economic rights, and the impact of crime on human rights, and will pursue this further with the Commission.
- 6.5 The Committee notes the Commission's international reputation and commends it for its co-operation with similar bodies elsewhere in the world, especially in Africa. The Committee notes the Commission's concern that the country has not ratified the International Covenant on Economic, Social and Cultural Rights, and will raise with the Department and appropriate structures in parliament the reasons for this.
- 6.6 The Committee notes the failure of government departments to co-operate with the Commission in relation to complaints that it investigates. Should the Commission feel it necessary, it could refer some of these cases to the Committee. Within its time, capacity and other constraints, the Committee will explore the possibility of raising these cases with the relevant portfolio committee responsible for oversight of those Departments which are not co-operating.
- 6.7 The Committee notes the specific issues in 2.5 above raised by the Commission's Chairperson for the Committee's attention. The Committee's initial response is as follows:
  - Obviously, the South African Human Rights Commission Act has to be amended to be consistent with the 1996 Constitution. The Committee understands that the Department of Justice and Constitutional Development and the Commission are to co-operate on finalising the relevant draft legislation. The Committee feels that the Bill and the amended staff regulations should be introduced to Parliament by the end of May 2008 – and will raise this with the Department. The Committee will process the Bill expeditiously.
  - The Committee will raise, with the Department and the Speaker's Office, the need to, as soon as possible, fill the vacancy created by the resignation of a full-time Commissioner on 1 December 2006.
  - The Committee will raise with the Department and the Speaker the need to ensure the timeous appointment of Commissioners for the new term beginning in September 2009, especially as all the current Commissioners may not be re-appointed, having already served two consecutive terms. The Commission is concerned that the current Commissioners need to have enough time to brief the new Commissioners and ensure a smooth hand-over. There is a need to appoint the new Commissioners in good time also because national and provincial elections are due in 2009 – and this will mean limited time for the Executive and Parliament to attend to this matter. The Committee suggests that the Bill amending the South African Human Rights Commission Act include a provision for the staggered appointment of Commissioners to provide for more continuity and stability and the transfer of institutional memory.

- The Committee believes that the right of access to information is obviously essential in the pursuit of human rights. The Committee understands that the Promotion of Access to Information Act does not, however, provide for an Information Commissioner to oversee the Act's implementation; instead, the Commission is given various powers and functions in this respect. The Committee is sympathetic to the Commission's proposal that a dedicated Information Commissioner be appointed within the Commission, with the requisite financial and other resources - and will raise the possibility of this with the Department.
- 6.8 The Committee notes the ad hoc manner in which the salaries and conditions of service of Commissioners is determined. We understand that this is common to several statutory institutions. The Committee notes section 219(5) of the Constitution which provides for the enactment of framework legislation to determine the salaries, allowances and benefits of, amongst others, the Public Protector, the Auditor-General and members of any commission provided for in the Constitution. The framework legislation has not yet been enacted. The Committee will raise with the Department the need to address the salaries and conditions of service of the Commissioners in a more systematic way.
- 6.9 The Committee does not understand why the delay in finalising the regulations that will bring section 28 of the Promotion of Equality Prevention of Unfair Discrimination Act into operation, and will raise this matter with the Department.
- 6.10 While the Committee welcomes the initiatives to ensure greater co-ordination and co-operation among the Chapter 9 institutions, we feel that much more needs to be done in this regard, and we will monitor developments with interest. The Committee wants to better understand what the challenges are in this regard, and will pursue this further with the Commission at our next meeting with it. An area of co-operation we are also interested in is the referral of complaints by the Commission to other bodies, such as the Office of the Public Protector and the Commission for Gender Equality.
- 6.11 The Committee notes the high vacancy rates referred to in sections 4.1 and 4.2 and would be interested to see progress made in this regard, the challenges notwithstanding.
- 6.12 The Committee would like to engage further with the Commission on its employment equity plan and targets.
- 6.13 The Commission is commended for receiving an unqualified audit report with no matters of emphasis. Its underspending of 3% is minimal and understandable.
- 6.14 Overall, the Commission's Annual Report and presentation of it to the Committee were good. The Commission was unusually focussed on relating its achievements to the targets defined in its Strategic Plan. The Annual Report does, however,

7.2 The Committee expresses its appreciation to Ms Christine Silkstone of Parliament's Research and Information Unit for her assistance with this report.