

**NATIONAL HUMAN RIGHTS INSTITUTIONS: A COMPARATIVE STUDY OF THE
NATIONAL COMMISSIONS ON HUMAN RIGHTS OF CAMEROON AND SOUTH
AFRICA**

**SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS OF THE DEGREE
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BY

LILIAN MANKA CHENWI

PREPARED UNDER THE SUPERVISION OF

PROFESSOR MICHELO HANSUNGULE

AT THE

FACULTY OF LAW, UNIVERSITY OF PRETORIA, SOUTH AFRICA

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DECLARATION

I, Lilian Manka Chenwi, hereby declare that this dissertation is original and has never been presented in the University of Pretoria or any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation.

Student: Lilian Manka Chenwi

Signature: _____

Date: _____

Supervisor: Professor Michelo Hansungule

Signature: _____

Date: _____

DEDICATION

This dissertation is dedicated to my mother, Mrs Chenwi Marymagdalene. You have been my inspiration for all these years. Without you, it would not have been possible for me to get all the material I needed to write this dissertation. Thank you for being there for me. Your moral support has brought me to where I am at present. I owe my success to you.

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LIST OF ABBREVIATIONS

ACAT	Christian Action for the Abolition of Torture
ACHPR	African Charter on Human and Peoples' Rights
CC	Constitutional Court
CHRAJ	Commission on Human Rights and Administrative Justice
CIS	Commonwealth of Independent States of the former Soviet Union
CRC	Convention on the Rights of the Child
ECOSOC	Economic and Social Council
FCFA	Francs CFA (Cameroon currency)
HRC	Human Rights Commission
HRCA	Human Rights Commission Act
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	International Council on Human Rights
NCHRF	National Commission on Human Rights and Freedoms
NGO	Non Governmental Organisation
NHRC	National Human Rights Commission
NHRI	National Human Rights Institution
R	Rand (South African currency)
SA	South Africa
SAHRC	South African Human Rights Commission
UDHR	Universal Declaration of Human Rights
UHRC	Ugandan Human Rights Commission
UN	United Nations
UNHCHR	United Nations High Commission for Human Rights
UNCHR	United Nations Commission on Human Rights
USA	United States of America

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International Covenant on Civil and Political Rights, 1966

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Principles relating to the status and functioning of national institutions for the protection and promotion of human rights, 1991

The Declaration of Commonwealth Principles, 1971

The Harare Commonwealth Declaration, 1991

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LEGISLATION

Constitution of the Republic of South Africa Act 200 of 1993

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Constitution of the Republic of Cameroon, 1996

Decree No. 90/1459 of 8 November 1990 establishing the National Commission on Human Rights and Freedoms of Cameroon

South African Human Rights Commission Act, Act 54 of 1994

The Constitution of Ghana, 1992

Commission on Human Rights and Administrative Justice Act, Act 456 of 1993

Commission on Human Rights and Administrative Justice (complaints procedure) Regulations, 1994 Constitutional instrument No. 7

The Ugandan Constitution, 1995

Ugandan Human Rights Commission Act, 1997

CHAPTER ONE

GENERAL INTRODUCTION AND BACKGROUND TO NATIONAL HUMAN RIGHTS INSTITUTIONS

1.1 INTRODUCTION

The protection and promotion of human rights is not a fixed state to be achieved prior to or immediately after the ratification of international instruments, but a continuing, challenging enterprise.

Brian Burdekin¹

Human rights considerations are relevant to almost every sphere of governmental activity and indeed, to many other areas of public and private life.² The second half of the twentieth century saw the internationalisation of human rights norms, which can be seen as the rationale behind the general notion that the protection of human rights is an international responsibility. However, the recent proliferation of national human rights institutions (NHRIs) shows that the protection of human rights is not only an international responsibility but also a national one.³ Their establishment is crucial to ensure monitoring and protection of human rights at the national level.

Considering the above, a NHRI could therefore be seen to refer to a body whose functions are specifically defined in terms of the promotion and protection of human rights. Burdekin and Evans have suggested that any definition of what constitutes a NHRI must allow for a broad, inclusive approach.⁴ Taking this suggestion into consideration, the United Nations (UN) has defined a NHRI as a body that is established by a government under the constitution, by law or by decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.⁵ The UN definition is too broad to be focussed and too inclusive of several bodies, which might not qualify as NHRIs. For example, the South African Commission for Gender Equality could not qualify as a NHRI since it deals with one aspect – gender. It will be more appropriate to have a definition that

¹ Burdekin, B “Human rights commissions” in Hossain, K et al (2000) *Human rights commissions and ombudsman offices: National experiences throughout the world* 805.

² National institutions for the promotion and protection of human rights
<<http://www.unhchr.ch/html/menu6/2/fs19.htm>> (accessed on 13 June 2002).

³ Cardenas, S *Adaptive states: the proliferation of national human rights institutions* 9
<<http://www.ksg.harvard.edu/cchrp/web%20working%20papers/cardenas.pdf>> (accessed on 14 August 2002).

⁴ Burdekin, B and Evans, C “National human rights institutions: A global trend” *Canadian human rights foundation newsletter*: 2000; Volume XV; No. 2 1.
<http://www.chrf.ca/english/publications_eng/files/newsletter/vol_15-n02/article.htm> (accessed on 6 September 2002).

⁵ Centre for Human Rights Professional Training Series No. 4 *National Human Rights Institutions: A handbook on the establishment and strengthening of national institutions for the promotion and protection of human rights* (UN Handbook) 6.

is more specific so as to encompass other institutions dealing with specific human rights issues.

Some have argued that these institutions are not a wise use of scarce resources and that an independent judiciary and democratically elected parliament are sufficient to ensure that human rights abuses do not occur in the first place.⁶ It is my view that a democratically elected parliament will not suffice. The parliament must also be effective so as to prevent human rights abuses. Thus, one may question why the need for NHRIs when courts could address human rights issues. Some countries, for example the United States of America (USA), do not have NHRIs since they have effective courts and parliament, which are adequate mechanisms for the promotion and protection of human rights. Thus creating a NHRI in the USA for example would seem rhetorical. This is true when one looks at the case of Canada where the presence of ethnic groups not being able to access courts prompted the creation of a NHRC. Thus courts were seen as inadequate and a NHRC was seen as an adequate mechanism to protect the rights of these ethnic groups.

Predictably, UN studies have shown that NHRIs have become effective instruments for the protection and promotion of fundamental human rights and freedoms.⁷ Despite this, it should be noted that these institutions have an important and constructive role to play in the promotion and protection of human rights, and it has become increasingly apparent that the effective enjoyment of human rights calls for their establishment.

1.2 TYPES OF NHRIs

The abundance of NHRIs presents both opportunities and challenges for the domestic implementation of international norms.⁸ Consequently, it is imperative to categorise the various types of national institutions when analysing such institutions. The UN broadly groups NHRIs into three categories: Human rights commissions (HRCs), Ombudsmän, and specialised national institutions designed to protect the rights of particular vulnerable groups.⁹ Cardenas and the International Council on Human Rights classify NHRIs into five categories - in addition to HRCs, Ombudsman, and specialised national institutions they have included parliamentary bodies and hybrid institutions.¹⁰ Considering the above, it is clear that some of the categories are either too broad or amorphous. There is a lot of

⁶ See n 2 above.

⁷ Carver, R and Hunt, P "National human rights institutions in Africa" in Hossain(n 1 above) 733.

⁸ On the one hand, the rise of NHRIs raises the domestic profile of human rights issues. On the other, the rise of often overlapping institutions introduces a host of coordination problems for local authorities.

⁹ Human Rights Watch (2001) *Protectors or pretenders? Government human rights commissions in Africa* (HRW) 10.

¹⁰ Cardenas (n 3 above) 12 – 14; International Council on Human Rights (2000) *Performance and legitimacy: National human rights institutions* (ICHR) 3 – 4.

confusion over the categorisation of NHRIs. This probably stems from the fact that several national institutions co-exist in the same country, for example in South Africa and New Zealand, where more than one national institution co-exist.¹¹ However, taking into account the juridical contents of NHRIs, they can be categorised as follows:

National Ombudsman – This is a single-member institution that originated in Sweden and has been enthusiastically embraced throughout Europe.¹² An Ombudsman protects individuals against misconduct or maladministration of the government. It should be noted that an Ombudsman in this context refers to the Swedish model of an Ombudsman.

Institutionalised Ombudsman - These are Ombudsman institutions that have undergone various transformations as a result of the development of the concept of an Ombudsman and are no longer the Swedish model of an Ombudsman. In some cases, an Ombudsman is not a single person but constitutes more than one person under the status of an Ombudsman; or it constitutes many persons under the supervision of one person. In Zambia for example, though there is one Ombudsman, a team of members, roughly four at a time helps him or her. In other cases, such institutions are no longer referred to as Ombudsman. For example, a new concept has been developed in South Africa referred to as “Public Protector”.¹³

National human rights commissions –These are multi-member institutions with a role to protect and promote human rights. They are concerned primarily with the promotion and protection of persons against all forms of discrimination and with the protection of civil and political rights.¹⁴ However, a few of these institutions have been empowered to protect socio-economic rights.¹⁵ These commissions also engage in training and education of people on human rights issues. The word “commission” has been defined as “a government agency having administrative, legislative or judicial powers”.¹⁶ Therefore, a court or soft forum engaged in the promotion and protection of human rights falls under this category.

¹¹ South Africa has a HRC and the Public Protector; and Hungary has a Parliamentary Commissioner for Civil Rights and one for National and Ethnic Minority Rights.

¹² ICHR (n 10 above) 65.

¹³ Gender activists who took part in multi party negotiations leading to the creation of the Public Protector insisted that the “man” part of the appellation “Ombudsman” may be perceived by many as discriminatory. It was agreed that the office be given a more gender-neutral name. Therefore, “Public Protector” was found to be the ideal name, as it does not have any sexist tone. However, Prof. Hansungule recalls an interesting debate during a Human Rights Workshop in South Africa held in 1998, attended by officers from the SAHRC, Public Protector and others. In the workshop, former Swedish Ombudsman and judge of the Appeal Court of Sweden attempted to explain that ombudsman did not have any reference to “man” in its original conception. But South African participants still insisted that the term could be gender insensitive.

¹⁴ UN Handbook (n 5 above) 7.

¹⁵ For example, the SAHRC.

¹⁶ Penguin Hutchinson Reference Library (1996) *Longman Dictionary of English Language*: Penguin Books Ltd.

Human rights bodies – These bodies can either be parliamentary bodies, specialised bodies, or other bodies dealing with human rights issues. In general, most human rights bodies tend to undertake a broad range of functions (or specific functions in the case of specialised institutions) such as monitoring human rights conditions, overseeing government implementation of human rights treaties and assisting in the development of national human rights plans. Therefore, any body, which is a forum to make a complaint regarding any human rights issue, and specialised national institutions that are designed to protect the rights of particular vulnerable groups, such as ethnic minorities, indigenous populations, refugees, women or children, also fall under the arm of human rights bodies.

Hybrid Institutions – These are a mixture of national Ombudsmän and NHRs. They can also be referred to as quasi HRCs. Examples of such bodies include Ghana’s Commission on Human Rights and Administrative Justice (CHRAJ), and the Palestinian Citizen’s Rights Commission.

1.3 BACKGROUND TO THE STUDY

The protection and promotion of human rights is one of the topical issues of debate in the international arena. The establishment of NHRs to fulfil this has, in some cases, proved very costly, bureaucratic, controversial and problematic. Despite the aforesaid, it is generally accepted that the major threat to the protection and promotion of human rights at the national level, stems from the ineffectiveness of NHRs, which may, in some cases, be associated with lack of commitment by governments towards the promotion and protection of human rights and in other cases, lack of commitment by civil society. However, in Africa, the appearance of NHRs would seem to indicate that even some of the most repressive African governments appear to accept the international discourse and an acknowledgement that human rights should be part of their government portfolio. It is against the abovementioned that this dissertation is written.

1.4 HISTORICAL DEVELOPMENT OF NHRIS

The historical development of NHRs in the UN goes as far back as 1946,¹⁷ when it was discussed in the Second Session of the UN Economic and Social Council (ECOSOC). ECOSOC’s decision was to invite member states to “consider the desirability” of establishing local bodies in the form of “information groups or local human rights committees” to function as vehicles for collaboration with the UN Commission on Human

¹⁷ The Swedish model of NHR goes as far back as 1713 when King Charles XII appointed an Ombudsman, then called “chancellor of justice”.

Rights (UNCHR).¹⁸ In 1960, this issue was raised again with a view to broaden the form of these bodies.¹⁹ Subsequently, the growth of human rights instruments in the 1960s and 1970s saw the need for mechanisms to guarantee the implementation of these instruments at the national level. The result of this was the “Seminar on National and Local Institutions for the Promotion and Protection of Human Rights” held in Geneva in September 1978.²⁰ At this Seminar, the first set of guidelines outlining the general functions of national institutions was adopted. They were later endorsed, by the UNCHR and the General Assembly.²¹

Consequently, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris on 7 – 9 October 1991 saw the birth of the Paris Principles.²² The “Paris Principles” was a set of recommendations and principles, later endorsed by the UNCHR as the official principles relating to the status of national institutions. Its aim is to ensure as much autonomy of NHRIs from government, particularly the executive. However, in practice, most HRCs find it difficult to maintain such a distance. Furthermore, the need for NHRIs was exacerbated at the World Conference on human rights in Vienna in 1993, leading to an explosive growth in the number of NHRIs particularly in developing countries.²³

1.5 LEGAL BASIS FOR AFRICAN NHRIs

Regionally, the African Charter on Human and Peoples’ Rights (ACHPR), 1981 provides for the creation of NHRIs by governments in Africa.²⁴ Article 26 of the ACHPR stipulates that:

State Parties to the Present Charter shall have the duty to guarantee the independence of the Courts and shall allow *the establishment and improvement of appropriate national institutions* entrusted with the promotion and protection of human rights and freedoms guaranteed by the present Charter. [My emphasis.]

Article 45 further requires the African Commission on Human and Peoples Rights (the African Commission) to co-operate with other African and international institutions concerned with the promotion and protection of human rights. Therefore, national institutions have a role to play in the implementation of the ACHPR at the national level.

¹⁸ ECOSOC Resolution 2/9 of 21 June 1946. Lindholt, L et al (2001) *National human rights institutions: Articles and working papers* 5.

¹⁹ ECOSOC Resolution 772 B (XXX) of 25 July 1960.

²⁰ St/ HR/ SER.A/ 2, chapter V. Lindholt (n 18 above) 5.

²¹ A /RES /33 /46 of 14 December 1978.

²² See Resolution 1992/54 of 3 March 1992; and also E /CN.4 /1992 /43 and Add. 1.

²³ Lindholt (n 18 above) preface.

²⁴ The ACHPR was adopted in 1981 and entered into force in 1986.

By adopting the ACHPR, states incurred legal obligations to implement human rights standards domestically. Despite this, human rights violations remain rampant in Africa. NHRIs are seen as an attempt to curb these violations. However, some NHRIs have been established largely as a form of window dressing. A number of such institutions have been created to foster only the appearance of concern and to forestall domestic or international pressure and criticism.²⁵ It is therefore important to bear in mind that the mere creation of a NHRI cannot and should not be equated with respect for human rights or even genuine commitment to this goal.

1.6 STATEMENT OF RESEARCH PROBLEM

Implementation of human rights instruments, and protection and promotion of human rights at the national level is a contemporary phenomenon that is still developing. The ACHPR and the Paris Principles provide for the creation of national institutions to carry out this task. This has led to NHRIs becoming more prominent actors in the national, regional and international arena. However, NHRIs still face the problems of:

- Legitimacy;
- Operational constraints; and
- Ignorant population.

These factors constrain the effective functioning of these institutions. It should be noted that the key constraint on the effective functioning of NHRIs is legitimacy. Such institutions usually find themselves not legitimate in the eyes of the people they are created to serve.²⁶

The above brings to mind the question – what makes a NHRI effective? Generally, there is no consensus as to the effectiveness of NHRIs. This study has therefore been triggered by widespread perceptions and reports within civil society that such institutions are left at the mercy of governments in power. Others have seen such institutions as a “double-edged sword’ – in the best of circumstances, they strengthen democratic institutions but they can also be mere straw men, part of government’s administrative machinery to scuttle international scrutiny.²⁷ Another issue that has actuated this study is the misconception that people have about some NHRIs. This misconception originates not so much from the actual

²⁵ In Cameroon, Nigeria, Togo, and Zambia, the creation of NHRIs was motivated by the desire to deflect criticism of the government’s recalcitrance to political liberalisation.

²⁶ For example, the South African HRC has legitimacy but that of Cameroon and Zambia do not since they are perceived to have been created by government to compromise human rights criticisms.

²⁷ National human rights institutions in the Asian-Pacific region: Report of the alternate NGO consultation on the Second Asian-Pacific Regional Workshop on national Human Rights Institutions, March 1998 <<http://www.hrdc.net/nhris/AsiaPacNHRIs.rtf>> (accessed on 2 September 2002).

operation of HRCs but from the history of past Ombudsman institutions that have purported to protect human rights.²⁸

1.7 OBJECTIVES OF THE STUDY

This dissertation, from a comparative dimension, analyses NHRIs with specific reference to the National Commission on Human Rights and Freedoms (NCHRF) of Cameroon and the South African Human Rights Commission (SAHRC). The objectives of this study are:

- To expose the developing concept of NHRIs;
- To generate interest and awareness to the concept;
- To contribute towards learning of the dimensions of the concept;
- To appreciate the difficulties these institutions have to face; and
- To recommend measures designed to ameliorate some of the problems NHRIs face.

1.8 SIGNIFICANCE OF THE STUDY

This study is of particular significance given that Africa is going through a transitional phase, from dictatorship, and in the case of South Africa, apartheid, to democracy. Promotion and protection of human rights is becoming even more important. NHRIs constitute an important, if not, most relevant tool towards a human rights culture in Africa. Additionally, human rights violations in Africa remain unabated. Consequently, studies on promotion and protection of human rights such as this are essential if not bindingly relevant.

1.9 HYPOTHESIS

This study endeavours to test the hypothesis that “NHRIs can contribute to greater respect for human rights as well as increase awareness especially among ordinary people”. There exist a lot of controversies surrounding the promotion and protection of human rights by national institutions. Moreover, most people are unaware of their rights, and the situation is far much worse in Africa. Clear strategies to educate people on their rights and sound mechanisms outside costly court processes to provide redresses when violations occur are unavoidable.

²⁸ In Ghana, the Ombudsman office which was created in 1980 and died in 1987, had numerous problems that are still associated with the present CHRAJ.

1.10 RESEARCH METHODOLOGY

NHRCs are still new institutions and hence not subject of much literature. I have relied largely on Internet, grey papers, statutes, and international instruments. Therefore, the main research methodologies employed include intensive archival research, intensive Internet research, and the use of questionnaire in the case of the NCHRF.

1.11 SCOPE OF THE STUDY

This dissertation is organised into five chapters:

- Chapter one deals with general introduction and background to NHRIs;
- Chapter two focuses on normative standards on NHRIs;
- Chapter three deals with the prospects and challenges of the NCHRF and the SAHRC by discussing four key features of an effective NHRI in the context of the above NHRCs;
- Chapter four is a brief analysis of the jurisprudence of the NCHRF and the SAHRC, with a view to determining the extent of their contribution to the development of human rights jurisprudence; and
- Chapter five is the conclusion of the study, which provides recommendations designed to ameliorate some of the problems NHRIs face.

1.12 LITERATURE REVIEW

A number of human rights scholars have considered the subject of NHRIs. However, this shows that very little has been done with respect to comparative studies, or on the jurisprudence of such institutions.

Hossain et al²⁹ brings together the experiences of NHRIs and Ombudsman institutions throughout the world. These experiences were presented at the International Conference on the establishment of the Ethiopian HRC. This compilation also brings together the papers of scholars on NHRIs. The problem with this compilation is that some of the articles on specific NHRCs are written by their respective chairperson, which makes it doubtful if they present a clear picture of the actual functioning of the Commissions on the ground.³⁰

²⁹ Hossain (n 1 above).

³⁰ Solomon Nfor Gwei (Chairman of NCHRF at the time) shares with us the experience of the NCHRF, its establishment, operations and challenges. Barney Pityana (Chairman of SAHRC at the time) shares with us the experience of the SAHRC, its establishment and operation, relations with the executive, independence, accountability and its challenges.

Human Rights Watch³¹ analyses government HRCs in Africa. Its report is divided into two parts: an analytical overview followed by a series of country chapters that examine in greater detail NHRCs of seventeen countries in sub-Saharan Africa. One of the questions considered by Human Rights Watch is: are sponsored human rights bodies to be regarded with suspicion and distrust or should their development be encouraged and supported?

Burdekin and Gallagher³² discuss the concept of NHRIs and provide an illustrative overview of their work. This study also highlights the key criteria for an effective institution. A survey is then done on recent developments in the area of national institutions with particular reference to the work of the United Nations High Commissioner for Human Rights in promoting the establishment of new institutions and strengthening existing ones.

Hatchard³³ critically examines the organisation, functions and powers of HRCs in Commonwealth Africa, while pointing out important lessons that these institutions provide for other countries worldwide. He considers the requirement for maintaining their independence with specific reference to the Ugandan Human Rights Commission (UHRC). Examples are drawn from Malawi, Ghana, South Africa and other jurisdictions.

The International Council on Human Rights³⁴ focuses its analysis on the actual performance of NHRIs. Ghana, Mexico and Indonesia are used as case studies. The study offers a comprehensive overview of global experience of national institutions. It further demonstrates that the legitimacy and performance of NHRIs must keep in view the different socio-political circumstances under which the institutions have emerged. The study states that there is no single model of NHRI for the world, but that there are however principles of independence, integrity and good performance which must be kept in view.

Lindholt et al³⁵ put together the views of authors, with regard to the establishment, development and functions of NHRIs. This study discusses, among other issues, standard setting and achievements, effectiveness, guarantees of independence, and general aspects of quasi-judicial competences of NHRIs.

To conclude, the core of this study is therefore to contribute to the debates on the effectiveness of NHRIs. Moreover, the available literature shows that the issue of human

³¹ HRW (n 9 above).

³² Burdekin, B and Gallagher, A "The United nations and national human rights institutions" in Alfredsson et al (eds) (2001) *International human rights monitoring Mechanisms* 815 – 825.

³³ Hatchard, J "A new breed of institutions" The development of human rights commissions in commonwealth Africa with particular reference to Uganda Human Rights Commission" (1999) 32 *Comparative and international law journal of South Africa*.

³⁴ ICHR (n 10 above).

³⁵ Lindholt (n 18 above).

rights jurisprudence by the NHRIs has not been addressed. This is the point where the contribution of this study is very significant as it takes this into consideration.

CHAPTER TWO

NATIONAL HUMAN RIGHTS INSTITUTIONS: NORMATIVE STANDARDS

2.1 INTRODUCTION

As has been pointed out in the previous chapter, NHRIs have an important and constructive role to play in the promotion and protection of human rights. For these institutions to promote and protect human rights effectively, it is necessary for a standard to exist, which relates to their functioning and by which such institutions will abide. A standard is relevant for reasons of uniformity and assessment of national institutions, especially with respect to the legal status of such institutions. The creation of the International Co-ordinating Committee of National Institutions in 1993, which comprises representatives of all regions, further emphasises the importance of standards.³⁶ This Committee has a Credentials Committee, which accredits NHRIs after examining their compliance with international standards. Moreover, due to the varying political context in which NHRIs are created, there is a need to set standards which such institutions should follow to ensure efficiency and legitimacy. This chapter focuses on normative standards relating to NHRIs at the international, regional and national levels, with specific reference made to the NCHRF and the SAHRC when discussing the normative standards at the national level.

2.2 INTERNATIONAL NORMATIVE STANDARDS

At the international level, recognition of the contribution of NHRIs has become firmly entrenched during the last decade.³⁷ This called for the need for international standards by which NHRIs have to conform. The result of which was the Paris Principles,³⁸ adopted in 1993 by the UN General Assembly. Consequently, many NHRIs have been set up on the basis of the Paris Principles. Even though the Paris Principles have been implemented mainly by third world countries and a few developed countries. It is however very important with respect to its legal status since it has been adopted by the UN General Assembly. Furthermore, the Vienna Declaration and Programme of Action adopted by the World Conference in 1993 encouraged the establishment of NHRIs and recognised the Paris Principles.³⁹

³⁶ Burdekin and Evans (n 4 above) 1.

³⁷ As above.

³⁸ Principles relating to the status and functioning of national human rights institutions for the protection and promotion of human rights <<http://www.unhchr.ch/html/menu6/2/fs19.htm>> (accessed on 20 June 2002).

³⁹ Burdekin and Evans (n 4 above) 1.

2.2.1 The Paris Principles

The Paris Principles were a product of the first International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris from 7th - 9th October 1991.⁴⁰ The output was a set of recommendations and principles, adopted by the UNHRC the following year,⁴¹ and later adopted by the UN General Assembly in 1993. The Paris Principles provide for institutional competence in the promotion and protection of human rights.⁴² In sum, the key criteria for NHRIs as laid down by the Paris Principles are:

- Independence guaranteed by statute or constitution
- Autonomy from government
- Pluralism, included in membership
- A broad mandate based on universal human rights standards.⁴³
- Adequate powers of investigation
- Sufficient resources.

2.2.2 Brief analysis of the Paris Principles

There exist a lot of questions regarding the substance and status of the Paris Principles. Firstly, the status of the Paris Principles has been an issue of debate, which reveals some doubts as to whether it is legally binding or not. In my view, the Paris Principles is not a treaty. Therefore, they are of the character of “soft law” and not “hard law”, and thus have no legal force. This explains why some NHRIs do not abide by the Paris Principles, as they are not bound by the Principles.

Secondly, considering the substance of the Paris Principles, it is obvious that the Principles, as has also been pointed out by the International Council on Human Rights, are inadequate in a somewhat paradoxical way.⁴⁴ This is based on the premise that while the Paris Principles lay down standards to be met by NHRIs, it is surprising that some institutions have been effective in their own context without following the Paris Principles – that is, they had limited independence and inadequate funding yet have made a positive impact on the

⁴⁰ About 35 countries were represented. The seminar had observers from the European Court as well as from the Inter-American Court and Commission, but none from the African Commission on Human and Peoples' Rights.

⁴¹ UN Human Rights Commission Resolution 1992/54 of 3 March 1992.

⁴² See annexure A for full text.

⁴³ It should be noted that NHRIs have been created with a broad mandate in the African continent and in the Commonwealth of Independent States of the former Soviet Union (CIS). Institutions with a broad mandate on the African continent include Ghana (1993), Nigeria (1996), and Uganda (1996). In the CIS include Kazakstan (1996) and Georgia (1997).

⁴⁴ ICHR (n 10 above) 2.

human rights situation in their countries.⁴⁵ But some institutions set in conformity with these Principles have been completely ineffective. This is because, although such institutions are established in conformity with the Paris Principles, the main reason for their establishment was to foster only the appearance of concern and to forestall domestic or international pressure or criticism. For example, the creation of the NCHRF was motivated by the desire to deflect criticisms of the government's recalcitrance to political liberalisation.

Furthermore, the Paris Principles have shortcomings, which allows the Principles to appear to be nothing more than normative standards. Firstly, although the UN has classified an Ombudsman as a NHRI, according to the Paris Principles, "the Ombudsman, mediators and similar institutions form other bodies" and are not defined as national institutions.⁴⁶ At least an Ombudsman plays a significant role in the promotion and protection of human rights and should therefore be regarded and treated as a national institution. Secondly, criteria for the appointment of members are too general, thus allowing for politically motivated appointments. This can only be prevented if the Paris Principles is more specific, and if the terms of appointment include a definition of method of appointment. Thirdly, although dismissal criteria have been elaborated in the UN Handbook,⁴⁷ it would be more appropriate if it were also included in the Paris Principles.

However, it's worth noting that conforming to the Paris Principles is not enough since this will not guarantee a resilient HRC without commissioners of integrity and a government committed to making respect for human rights a reality. In addition, although the Paris Principles appear to be nothing more than normative standards, most NHRIs are formed on the basis of these Principles. For example, the HRC in Indonesia and Nigeria were set up on the basis of the Paris Principles. They are therefore becoming not just normative standards but points of reference for setting up NHRIs.

2.3 REGIONAL NORMATIVE STANDARDS

The formulation of standards governing NHRIs did not end with the formulation of the Paris Principles. They became, inevitably, the starting point for further exploration and dialogue at the UN as well as various regional levels. At the regional level, it is important to distinguish between the two types of standards that NHRIs have to conform to - "hard" and "soft" standards. Isolated but important "hard" normative standards can be found in regional

⁴⁵ An example of such institutions is the Ugandan Human Rights Commission (UHRC).

⁴⁶ UNHRC 1992/54, 1992; General Assembly Resolution 48/134, 1993.

⁴⁷ UN Handbook (n 5 above).

human rights instruments such as the ACHPR, while “soft” standards can be found in declarations such as the Harare Declaration and the Yaounde Declaration.⁴⁸

Article 26 of the ACHPR places a legal obligation on State parties to strive through NHRIs to ensure that Charter rights are adhered to. It is therefore implied from research and teaching under article 26 that these bodies have to be set up. This is also seen when under article 62 of the ACHPR, states in performing reporting obligation, also state whether they have set up these institutions.⁴⁹ Furthermore, article 45 of the ACHPR places an obligation on State parties to co-operate with the UN to establish NHRIs and also an obligation on them to promote human rights. Accordingly, human rights standards in the ACHPR can be seen as standards by which NHRIs in Africa must conform to in carrying out their functions since they must ensure the promotion and protection of the rights enshrined in the ACHPR. In addition to the human rights standards in the ACHPR, the African Commission has laid down criteria that NHRIs in Africa must follow to be able to apply for affiliate status with the African Commission.⁵⁰ These criteria lay down standards that such institutions have to conform to if they have to apply for affiliate status. The criteria are as follows:

- The national institution should be duly established by law, constitution or decree;
- That it shall be a national institution of a state party to the African Charter;
- That the national institution should conform to the Paris Principles;
- That a national institution shall formally apply for status in the African Commission.

The above standards have been criticised as being broad and not particularly discriminating in distinguishing between autonomous and complaint Commissions.⁵¹ It is my view that it would be difficult to distinguish between these Commissions since most Commissions are hardly autonomous in practice. The word “decree” in the first criterion could raise some serious problems since some institutions are established by decree that is issued by one person, for example, the military decree creating the Nigerian HRC. Also, regarding the second criterion and looking at the position of Morocco raises questions. Customary international law standards are required by all State parties whether they are parties to the ACHPR or not. This raises the question whether Morocco cannot set up such an institution since it is not a party to the ACHPR. The last criterion also is too positive and some NHRIs

⁴⁸ The premise for distinguishing between “hard” and “soft” standards stems from the differentiation between “hard law” and “soft law”. Therefore, “hard” standards are treaty standards thus binding while “soft” standards are non-treaty standards thus not binding.

⁴⁹ Article 62 provides for State parties to submit every two years a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.

⁵⁰ Resolution on granting observer status to national human rights institutions in Africa <<http://www.nhri.net/pdf/ResAfrNhri.pdf>> (accessed on 13 September 2002). See African Commission document DOC/OS (XXVI)/115, distributed at the 26th Ordinary Session of the Commission in Kigali, Rwanda, November 1999.

⁵¹ HRW (n 9 above) 69.

will feel this will compromise their independence. Reasons being that they might not want to apply for affiliate status but will wish to attend sessions of the African Commission.

Furthermore, regional conferences have been held, which have resulted in declarations that can be seen as standard setting for NHRIs. These declarations include amongst others: Firstly, the Harare Commonwealth Declaration, 1991,⁵² which reaffirms the Declaration of Commonwealth Principles agreed in Singapore in 1971⁵³ Those who met in Harare pledged to work for the promotion and protection of fundamental political values of Commonwealth, namely democracy, democratic processes and institutions, which reflect national circumstances and fundamental human rights. The result of this was the establishment of HRCs in Uganda, Ghana and Malawi. They represented a “new breed” of institutions designed to promote and protect human rights and the concepts of good governance, accountability and the rule of law that form the basis of the Harare Declaration.⁵⁴ In sum, the Harare standards include: pledge by governments to assist in creating and building the capacity of requisite institutions; to protect and promote fundamental human rights; to strive to promote in their respective countries those representative institutions and guarantees for human rights and personal freedom under the law; and to support the UN and other international institutions in the promotion of international consensus on major global, economic and social issues.

Secondly, the Yaoundé Declaration of 1996 can also be seen as standard setting for NHRIs in Africa.⁵⁵ The Declaration was a product of the First African Conference of National Institutions for the Promotion and Protection of Human Rights, held in Yaoundé, Cameroon from 5 – 7 February 1996. It reaffirms the important role NHRIs must play to promote human rights and provide remedy when those rights are violated.

2.4 NATIONAL NORMATIVE STANDARDS

The World Conference on Human Rights recognised that it is the right of each state to choose the framework, which is best suited to its particular needs at the national level.⁵⁶ This stems from the premise that effective implementation of international human rights

⁵² The Harare Commonwealth Declaration
<<http://www.thecommonwealth.org/whoweare/declarations/harare.html>> (accessed on 18 September 2002).

⁵³ The Declaration of Commonwealth Principles, 1971
<<http://www.rcscanada.org/commonwealth/declaration.html>> (accessed on 18 September 2002).

⁵⁴ Hatchard (n 33 above) 1.

⁵⁵ The Yaounde Declaration <<http://www.nhri.net/pdf/the%20Yaounde%20declaration.pdf>> (accessed on 18 September 2002).

⁵⁶ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, Vienna, 25 June 1993 (A/CONF.157/24, Part I, paragraph 36).

standards is ultimately a national issue.⁵⁷ This therefore allows for governments to set up rules governing their respective NHRIs, which they establish with a role to promote and protect human rights. These institutions also ensure that the government and other bodies effectively apply laws and practices concerning human rights. This means that these institutions have to conform to human rights standards in these laws. This leads to the inevitable conclusion that laws concerning human rights and regulating NHRIs at the national level are national normative standards for each national institution in their respective countries. This section of the study will focus on national normative standards in Cameroon and South Africa, as the study's main focus is the NCHRF and SAHRC.

2.4.1 The NCHRF: Normative standards

The NCHRF was created by presidential decree in 1990 to defend and promote human rights and freedoms.⁵⁸ It was one of the first NHRI to be established in Africa as part of a programme towards democracy. This institution is therefore regulated by the Constitution of the Republic of Cameroon, 1996 (the 1996 Constitution) and the 1990 Decree creating the NCHRF. It is worth noting at this point that the Constitution is above the 1990 Decree considering the hierarchy of laws in Cameroon. Therefore, the human rights standards in the 1996 Constitution and the 1990 Decree are the normative standards that the NCHRF must conform to.

Fundamental rights and freedoms are enshrined in the Preamble of the 1996 Constitution.⁵⁹ The Preamble also affirms Cameroon's attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights (UDHR), the UN Charter and the ACHPR, and all duly ratified international conventions relating thereto. Although the preamble is regarded as part and parcel of the Constitution and guarantees protection of these rights, it is not in practice, justiciable. Moreover, there are very few cases in which the courts have protected the rights in the Preamble of the Constitution.⁶⁰ Thus, the relevance of the NCHRF to ensure that these rights are protected by not only protecting the rights in the Constitution but also those enshrined in other international instruments that Cameroon affirms its attachment to.

The 1990 Decree sets out the mandate, composition, term of office of the NCHRF, and its reporting obligation. The NCHRF in carrying out its activities must conform to the standards set out in this Decree. However this has not been the case. To begin with, article 4(1) of the

⁵⁷ Burdekin and Gallagher (n 32 above) 815.

⁵⁸ Decree No. 90/1459 of 8 November 1990 (See annexure B for full text).

⁵⁹ Article 65 of the 1996 Constitution provides that "the preamble is part and parcel of the Constitution".

⁶⁰ See the ruling of the SCNC trial by Abea Abednego (Discussed in Chapter four of this dissertation).

1990 Decree provides for the composition of the Commission, but human rights NGO's are not listed among the group of institutions represented in the Commission. This falls short of the requirements set out in the Paris Principles regarding composition of a Commission.⁶¹ Article 4 (2) provides that the President shall appoint the members of the Commission for a five-year term, but the present members have been in office since the Commission became operational in 1992, going beyond the gazetted five-year term. This further shows that these standards cannot be more than normative standards.

2.4.2 The SAHRC: Normative standards

The SAHRC was established in terms of Section 115 of the interim Constitution and section 184 of the final Constitution of the Republic of South Africa (the final Constitution), as one of the many state institutions supporting constitutional democracy⁶². The SAHRC's role is to build and promote a culture of human rights and to monitor the extension of rights to all citizens in line with the Bill of Rights in the Constitution.⁶³ The human rights standards in the final Constitution and the Human Rights Commission Act (HRCA), 1994⁶⁴ regulating the SAHRC are therefore the normative standards the SAHRC must conform to.

Unlike the Cameroon situation whereby rights are enshrined in the preamble of the 1996 Constitution, in South Africa, the Bill of Rights providing for fundamental human rights is found in Chapter 2 of the final Constitution. The final Constitution is one of the Constitutions that has an extensive Bill of Rights and has made socio-economic rights justiciable.⁶⁵ As opposed to the unjusticiability of the preamble of the 1996 Constitution of Cameroon, the final Constitution has an ambitious justiciable Bill of Rights. The SAHRC is governed by the Bill of Rights since it is obliged by section 184(1) of the final Constitution to promote respect for, protection and development of, human rights in the Republic.

The HRCA regulates the term of office of members, powers, duties and functions, and activities of the Commission. Contrary to the NCHRF, the SAHRC's mandate is as broad as possible thus conforming to the Paris Principles⁶⁶. However, the Commission has in practice limited its activities to a narrower range so as not to overlap with similar bodies

⁶¹ HRW (n 9 above) 125.

⁶² Constitution of the Republic of South Africa Act 200 of 1993 and Constitution of the Republic of South Africa Act 108 of 1996 respectively.

⁶³ McQuoid-Mason, D "The role of human rights institutions in South Africa" in Hossain (n 1 above) 618.

⁶⁴ See annexure for full text.

⁶⁵ Heyns and Brand "Introduction of Socio-economic rights in the South African Constitution" in (1999) 1 *Economic and social rights series* p 1. The many cases on socio-economic rights in South Africa confirms that these rights are justiciable. Some examples of these cases are, *Government of the Republic of South Africa v Grootboom* 2000 (11) BCLR 1169 (CC) and *Soobramoney v Minister of Health (Kwazulu Natal)* 1998 (1) SA 765 (CC).

⁶⁶ Although the mandate of the NCHRF appears to be broad, the mandate of the SAHRC is far much broader than that of the NCHRF.

created by the Constitution and other legislation. The SAHRC adopts a holistic approach to the promotion and protection of human rights coupled with the fact that socio-economic rights are explicitly included in the Commission's constitutional mandate.⁶⁷ Although the NCHRF has not got the same explicit mandate to address socio-economic rights, it has however found ways to do so. The NCHRF has a general responsibility, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, to monitor adherence to human rights. Therefore, by virtue of this responsibility, the NCHRF handles cases on socio-economic rights and makes recommendations.

2.5 CONCLUSION

In conclusion, it is clear that commitment to the above standards, particularly the international and regional normative standards, is given firm expression when countries create national institutions to promote and protect the rights of citizens and others within their jurisdiction. At the national level, for these institutions to function effectively, there must be some standards that they must conform to – the laws concerning human rights and laws establishing and regulating such institutions. These laws are referred to as the national normative standards. Although NHRIs have to abide by these standards, these institutions, more often than not, do not conform to such standards. However, experience has shown that in some instances, as stated in previous paragraphs, some institutions tend to function effectively despite their not conforming to some of these standards – national, regional or international standards, while some institutions who conform to such standards do not perform effectively. Despite this, it is my view that existence of standards and the will to conform to such standards are a prerequisite for effective functioning of NHRIs.

It is thus clear that, conforming to the above standards is not sufficient for a NHRI to function effectively. There should be a clear and firm commitment from the government and its law enforcement agencies to support the rule of law. This commitment must include upholding and complying with and implementing human rights standards, as well as recommendations and decisions issued by bodies entrusted with the promotion and protection of human rights. Moreover, since NHRIs have the capacity to make a substantial contribution to the realisation of human rights by transforming the rhetoric of international instruments into reality, it is important that there should be some consistency between these standards. That is, standards at the regional level, must uphold the principles in standards at the international level. In similar manner, standards at the national level, must uphold the principles in standards at both the regional and international levels.

⁶⁷ Section 184(3), Constitution of the Republic of South Africa Act 108 of 1996.

CHAPTER THREE

THE NCHRF AND THE SAHRC AT WORK: CHALLENGES AND PROSPECTS

3.1 INTRODUCTION

The role of national institutions as a mechanism for the promotion and protection of human rights has grown tremendously especially with the relentless support from the Office of the High Commissioner for Human Rights.⁶⁸ It should be noted that the establishment of NHRIs, although not always, follows concern about particular human rights situations. For example, the creation of the NCHRF was motivated by a desire to deflect criticisms of the government's recalcitrance to political liberalisation. Therefore, its creation followed concerns regarding a particular human rights situation - political liberalisation. In South Africa, the fall of apartheid unleashed a new way of democracy in which national institutions were considered necessary to break through from the past. The creation of the SAHRC therefore followed concerns regarding human rights violations during apartheid.

Considering the abovementioned, it is therefore clear that NHRIs in functioning are faced with a lot of challenges – they have to address the human rights concern that led to their creation, and at the same time and in most cases, the government expects these institutions to fulfil the government's motive behind their creation. Thus, the NCHRF and the SAHRC face multiple challenges to their continued relevance in Cameroon and South Africa respectively. This is exacerbated by the fact that the SAHRC exist in a far more democratic state than the NCHRF. This chapter discusses four main features of an effective NHRI – with specific reference to the NCHRF and the SAHRC. The chapter further identifies the challenges these institutions face and brings out prospects for the future.

3.2 FEATURES OF AN EFFECTIVE NHRI

In view of the UN definition of a NHRI, it is obvious that these institutions are established in one of three ways: By Constitution or constitutional amendment; by law or act of parliament; or by presidential decree. The NCHRF is established by presidential decree and the SAHRC is established by Constitution.⁶⁹ NHRIs created by presidential decree have less legitimacy than those created by Constitution. For example, the SAHRC and the CHRAJ established during a new constitutional order have far much legitimacy than the NCHRF

⁶⁸ Statement by Ms Shirley Mabusela to the 58th Ordinary Session of the UNCHR, Geneva, 18 April 2002 <http://www.sahrc.org.za/main_frame.htm> (accessed on 20 September 2002).

⁶⁹ National institutions have been established by presidential decree in France, Indonesia and Nigeria. Those established by constitution are found in Ghana, Uganda, Malawi, Zambia and the Philippines.

established to deflect criticisms. As stated above, this chapter will only focus on four main features of an effective NHRI, which have constantly been issues of debate. It should be noted that other features such as accessibility and co-operation with NGOs are also important features of an effective NHRI. However, they have not been the subjects of much debate as the four features discussed in the subsequent paragraphs.

3.2.1 Mandate

The mandate of a HRC is twofold - promotion and protection of human rights, and it must have accompanying powers since the power that a HRC possesses is critical to its ability to pursue protection activities.⁷⁰ An effective NHRI must enjoy a clearly defined and appropriate mandate so that the community it serves should be in no doubt as to the functions it is charged to perform, and to avoid possible conflict of jurisdiction with other independent agencies.⁷¹ Additionally, section A (2) of the Paris Principles provides that “a national institution shall be given as broad a mandate as possible”. In practice, the mandate of most HRCs is not always as broad as is expected. The mandate of the NCHRF is stated in article 2 of the 1990 Decree, and that of the SAHRC is found in both the South African Constitution, 1996 and the HRCA, 1994

3.2.1.1 Protection mandate of the NCHRF and the SAHRC

The NCHRF is empowered to carry out investigations in association with judicial authorities but it cannot formally intervene in any proceeding in a court. This is to prevent interference with the independence of the court, as its independence is higher than that of the Commission. Consequently, the Commission is limited to denunciation, mediation and conciliation. This is contrary to the powers of the SAHRC – in addition to the Commission’s power to resolve disputes through mediation, conciliation and negotiation and to take issues and disputes to court, the SAHRC can intervene in any proceeding in a court ruling as *amicus curiae*. The SAHRC has successfully acted as *amicus curiae* in *Government of the Republic of South Africa v Grootboom*.⁷² Furthermore, the SAHRC has far reaching powers including controversial powers of search and seizure, which allows it, unlike the NCHRF, to enter and search premises and attachment, remove articles and gain access to information relevant to any investigation, as well as creating offences and penalties.⁷³

⁷⁰ HRW (n 9 above) 15.

⁷¹ Burdekin and Gallagher (n 32 above) 820.

⁷² 2000 (11) BCLR 1169 (CC). However, an application for admission as *amicus curiae* by the SAHRC in *Fose v Minister of Safety and Security* 1997 (3) SA 786 (CC) was denied on evidence. See De Waal et al (2001) *The Bill of Rights Handbook* 120.

⁷³ Section 10 of the HRCA, 1994. See also Sarkin, J “ The role of national human rights institutions in post-apartheid in South Africa” in Sarkin, J and Binchy, W (eds) (2001) *Human rights, the citizen and the state: South African and Irish approaches* 30.

Section 184(1)(b) of the Constitution of the Republic of South Africa, 1996 provides that “the Human Rights Commission must...promote the protection, development and attainment of human rights”. The mandate of the SAHRC empowers it to investigate alleged violations of fundamental rights. Handling of complaints is therefore part of the Commission’s mandate and is seen to be the heart of the Commission.⁷⁴ In addition, socio-economic rights are included in the Commission’s constitutional mandate,⁷⁵ which is not the case with the NCHRF. Although the NCHRF handles complaints on socio-economic rights, it focuses mainly on civil and political rights. However, it is evident that the reason for the focus, which the SAHRC has adopted under constitutional mandate on socio-economic rights, is largely due to the need to undo the systematic abuses of the old political system. The appointment of a new chairperson, Jody Kollapen, has changed the Commission’s focus. Its focus will now be on the alleviation of poverty and the eradication of inequalities.⁷⁶

3.2.1.2 Promotion mandate of the NCHRF and the SAHRC

As regards the mandate to promote human rights, the NCHRF is empowered to be the driving force in human rights education, as it is expected to advise public authorities, publicise international human rights instruments, ensure relations with all sorts of organisations interested in human rights both at the national and international levels.⁷⁷ In practice, the Commission sees the promotion of human rights as the ultimate strategy for achieving its goal. It has organised training seminars and workshops and has a slot accorded to it by the Cameroon Radio Television in which the Chairman answers questions and draws the attention of the public to the consequences of non-respect for human rights.

In the case of the SAHRC, section 184(1)(a) of the Constitution of the Republic of South Africa, 1996 provides that “the Human Rights Commission must...promote respect for human rights and a culture of human rights”. It should be noted that the mandate to promote human rights in South Africa is carried out and co-ordinated largely by the Advocacy Unit based in the Johannesburg Head Office of the Commission.⁷⁸ However, the National Centre for Human Rights Education and Training carries out formal and informal education and training functions.⁷⁹ The SAHRC promotes human rights through, amongst

⁷⁴ Pityana, N “National institutions at work: The case of the South African Human Rights Commission” in Hossain (n 1 above) 632.

⁷⁵ Section 184 (3), Constitution of the Republic of South Africa Act 108 of 1996.

⁷⁶ Matlou, J “HRC shifts focus under new leadership” *Mail and Guardian* October 11 – 17 2002 Vol. 11, No. 40 6.

⁷⁷ The National Commission on Human Rights and Freedoms: Three year progress Report, 1997 – 1999 p 8. See also the National Commission on Human Rights and Freedoms: Annual Report 2000 8.

⁷⁸ South African Human Rights Commission: 5th Annual Report, January 2000 – March 2001 p 13.

⁷⁹ The Centre opened its doors on 1 April 2000 and was officially launched on 15 June 2000.

other methods, education and raising community awareness and making recommendations to parliament.⁸⁰

3.2.2 Composition

One of the key factors that determines the autonomy and effectiveness of a HRC is its membership, including the process and criteria for appointment.⁸¹ As can be deduced from section B (1) of the Paris Principles, diversity should be considered in appointing commissioners, especially with the view to attaining gender-balance. Pluralism is very important because it provides an opportunity for a variety of different sections of the society to be represented. Moreover, when commissioners come from different backgrounds, they bring their perspectives to bear, which can have an enriching effect on the quality of the institution's work. As stipulated in the Paris principles, commissioners must be appointed for a fixed term of office.

Article 4 of the 1990 Decree provides for the composition of the NCHRF but excludes NGOs, which is a major weakness of this Decree. The NCHRF has 41 members who are appointed by and originate from various social categories.⁸² Article 4 (2) of the 1990 Decree provides for members to be appointed for a five-year term, but at present, the founding members are still operating – thus going above the five years gazetted term.⁸³ When Commissioner Dankwa expressed his concern over this during the 31st Ordinary Session of the African Commission, Mr Dion Gute Joseph, Cameroon's Minister of State of External Affairs responded as follows:

There is a tactic renewal because the Head of State not in a decree but in a note in a letter asked them to extend their mandate. Now the reason is because that institution [the NCHRF] is in the process of reform and it was felt that it would be better to reform it with the existing members who [will] contribute more effectively...⁸⁴

Despite the above reason, a "tactic renewal" cannot be regarded as a justifiable renewal. It will be proper if there is legal renewal or the law is amended so as to extend the mandate of the members of the NCHRF. Furthermore, in a questionnaire (see annexure E) Mr Emile

⁸⁰ To develop an understanding and acceptance of human rights in South Africa, the SAHRC has promoted human rights education in partnership with the UN – UN/SA Technical Co-operation project. HRW (n 9 above) 17.

⁸¹ HRW (n 9 above) 17.
⁸² The numbers have not changed since 1997 but for the fact that the Chairman is now deceased. See Third periodic reports of State parties due in 1995: Cameroon. 01/12/97. CCPR/C/102/Add.2. <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CCPR.C.102.Add.2.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR.C.102.Add.2.En?OpenDocument)> (accessed on 20 September 2002).

⁸³ Cameroon's initial report to the African Commission on Human and Peoples' Rights para. 124 35. report presented at the 31st Ordinary session of the African Commission on Human and People's Rights, held in Pretoria from 2nd May to 16th May 2002.

⁸⁴ I was present at the Session and noted the minister's reply.

Nzalli Fezze, Executive Secretary of the NCHRF gave two reasons for this extended term: the ongoing preparation of a new status of the NCHRF, and the upcoming legislative election that was to inflict new blood from opposition political parties into the NCHRF. It is surprising that there has been no change even though the legislative election has already been held. This shows lack of commitment by the government to ensuring respect for human rights in the country.

Regarding the SAHRC, members are appointed for a fixed term of seven years, renewable once. The Commissioners come from a wide range of background and four of them are women, thus to an extent, gender balanced. The SAHRC is composed of 11 commissioners, 78 full-time members and 28 temporary members.⁸⁵ This number is far more than that of the NCHRF. Contrary to the NCHRF, where the President appoints members of the Commission, commissioners of the SAHRC are elected by a majority of the members of the national assembly and the President confirms the appointment.⁸⁶ Still contrary to the situation in Cameroon, the appointment procedure of Commissioners of the SAHRC has, in practice, been an open and transparent process, with public interviews.

3.2.3 Funding

A NHRI must have adequate resources as sufficient human resources and adequate funding are essential prerequisites for operational efficiency.⁸⁷ Section B (2) of the Paris Principles provides that a NHRC should have adequate funding so that it could be independent of the government and not be subject to financial control, which might affect its independence. The budget allocated to the NCHRF from 1998 - 2002 is as follows:⁸⁸

- 1998 – 1999 17, 000, 000 FCFA
- 1999 – 2000 120, 034,114 FCFA
- 2000 – 2001 150, 000, 000 FCFA
- 2002 – 2002 150, 000, 000 FCFA

The above shows an increase in the budget allocation of the NCHRF. However, this cannot be seen as a real increase since inflation rate and workload of the Commission has also increased. In addition, the Chairman of the Commission pointed out that the Commission continues to suffer inadequate financial, material and human resources to do its work.⁸⁹

⁸⁵ SAHRC: 5th Annual Report 91.

⁸⁶ HRW (n 9 above) 295.

⁸⁷ Burdekin and Gallagher (n 32 above) 821

⁸⁸ See HRW (n 9 above) p 123 for budget allocation from 1991 – 1996.

⁸⁹ Chairman's note: The NCHRF: Annual Report 2000 4.

As regards the SAHRC, its annual budget for 1998 - 1999 was R 13.2 million.⁹⁰ For 2000 - 2001 the budget allocation was R 16.763 million (the National Treasury recommended an increase to R 20.721 but later disregarded its recommendation); for 2001 - 2002, the budget allocation was R 21.899.⁹¹ This shows an increase in the budget allocation for the SAHRC, which is more than that for the NCHRF. Human Rights Watch has confirmed this by stating that the SAHRC is one of the best-funded and most active HRCs established in Africa.⁹² In my view, referring to the SAHRC as “one of the best-funded” is an overstatement since the SAHRC still suffers from insufficient funding. Thus, it is proper to see the SAHRC, in comparative terms, as one of the “adequately” funded HRCs in Africa.

3.2.4 Independence

The independence of a HRC is generally regarded as a precondition for its effective functioning and credibility.⁹³ However, a HRC can only be independent in its functioning since it will usually have inevitable links to other branches of government in its appointment, financing and the exercise of its powers. The question of who appoints members of an institution is often seen, rightly, as an issue that is intimately related to the independence of the body. For example, considering the case of the NCHRF, article 4(2) of the 1990 Decree provides that the President shall appoint the members of the Commission. Evidence has shown this to compromise the independence and efficiency of the Commission, as the commissioners are answerable to the President.

Moreover, there have been expressions of concern regarding the independence of the NCHRF: The Human Rights Committee regrets that the independence of the NCHRF is not ensured, as it reports to the President.⁹⁴ Also, the Committee on Economic, Social and Cultural Rights expressed concern about the lack of transparency and degree of independence of the NCHRF, since it submits its findings to the President.⁹⁵ However, these concerns to an extent cannot be seen as resulting from the fact that the Commission reports to the President. Reasons being that the SAHRC reports to parliament, but still has problems regarding the way parliament treat its reports. Not allowing for their participation in the consideration of its report could affect the independence of the Commission since it implies that parliament imposes on the Commission. Nevertheless, Mr Emile Nzalli of the

⁹⁰ HRW (n 9 above) 303.

⁹¹ SAHRC: 5th Annual Report 9.

⁹² HRW (n 9 above) 43.

⁹³ ICHR (n 10 above) 58.

⁹⁴ Concluding observations of the Human Rights Committee: Cameroon. 04/11/99. CCPR/C/79/Add.116 <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CCPR.C.79.Add.116.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CCPR.C.79.Add.116.En?OpenDocument)> (accessed on 20 September 2002).

⁹⁵ Concluding observations of the Committee on Economic, Social and Cultural Rights: Cameroon. 08/12/99.E/C.12/1/Add.40. <[http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.ADD.40.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.ADD.40.En?OpenDocument)> (accessed on 20 September 2002).

NCHRF, with regard to the independence of the NCHRF, stated: “ the NCHRF is very independent within the limits of the instrument [1990 Decree] creating it”.⁹⁶

With regard to the SAHRC, it has been reported that questions of independence of the Commission have not been resolved - the SAHRC has been concerned about the mechanism for the determination and allocation of its budget.⁹⁷ Mr Barney Pityana, former Chairman of the SAHRC stressed that this was a matter of concern not just in terms of the inadequacy of the budget but that in effect, National Treasury purports to prescribe the Commission’s priorities by simply systematically under funding the Commission.⁹⁸ Another issue regarding insensitivity to the independence of the Commission is that the Commission cannot rent property in its own name, acquire property for its sole use and in its own name.⁹⁹ This is contrary to section 17(1) of the HRCA, which states, “the Commission shall be a juristic person”.

3.3 CHALLENGES FACING THE NCHRF AND THE SAHRC

In general, the most serious challenge facing NHRIs is that of legitimacy – that is being legitimate in the eyes of those it is designed to protect. Looking at the Commissions in Ghana and South Africa, it is clear that where a whole new constitutional order is being developed, there is a greater chance that the institution will appear to belong to the nation as a whole.¹⁰⁰ This may be because of the degree of public consultation and participation in the establishment of such institutions. For example, the NCHRF is faced with a lot of difficulties in trying to win public legitimacy since there was no public consultation and participation in its establishment and appointment of its commissioners.

Considering the NCHRF, the main challenge it is faced with is ensuring accessibility to the Commission. This can only be done if the Commission has adequate resources to establish provincial offices. But the Commission faces the enormous challenge of prevailing on the government to provide adequate financial resources to enable it function effectively in discharging its mission. Another challenge facing the NCHRF is its inability to ensure the final solution of cases that it investigates. This is due to lack of legal and coercive power to enforce its decisions. In addition to this, the Commission, unlike the SAHRC, has no standing in court and also lacks the financial means to assist indigents in any legal

⁹⁶ This proves that the NCHRF is not completely independent.

⁹⁷ SAHRC: 5th Annual Report 3. See also Pityana, N “ Budget review and programmes 2001/2002: Introduction and Overview. (Presentation to Justice Portfolio Committee, Cape Town, 8 June 2001. <http://www.sahrc.org.za/main_frameset.htm> (accessed on 20 September 2002).

⁹⁸ Pityana (as above).

⁹⁹ SAHRC: 5th Annual Report 4.

¹⁰⁰ ICHR (n 10 above) 59.

undertaking.¹⁰¹ Yet another challenge facing the NCHRF, which was also pointed out by the Committee on the Rights of the Child, is the lack of an independent mechanism to monitor and evaluate progress in the implementation of the 1989 Convention on the Rights of the Child (CRC).¹⁰² Consequently, the protection of human rights has been the most difficult aspect of the Commission's work for the following reasons:

- Firstly, violations of human rights, which are committed by individuals, groups and the agents of the state are most visible to the public and draw much emotional reaction.
- Secondly, there is a perception among the public that protecting human rights and freedoms is the sole responsibility of the Commission. As a result of the inflated expectation from the ignorant public, the Commission is often subjected to serious erroneous criticism for allegedly not doing one thing or the other when violation occurs.

The SAHRC, on the other hand, is also faced with a series of challenges. Jody Kollapen, the new SAHRC Chairperson, has stated that the Commission's biggest challenge is to make it accessible to those who need it the most – "our provincial offices are located in the major cities, very far from rural villages".¹⁰³ In addition, although the SAHRC has a higher degree of credibility when compared to other HRCs, it still needs to earn and maintain total credibility and respect of all the people of South Africa. A third challenge faced by the SAHRC is how to increase appreciation of human rights, especially the avenues available through the Commission for bringing redress for human rights violations. This is a serious challenge in South Africa where there is ineffective and inefficient management of the criminal justice system and incompetence in the investigation of crime.¹⁰⁴

Furthermore, the method of appointment of commissioners has been the subject of much debate and is seen to undermine the work of the Commission.¹⁰⁵ Moreover, members of the Commission continue to operate without proper terms and conditions of employment. This has led to widespread criticisms of the role of the SAHRC.¹⁰⁶ Also, the SAHRC is seen not to be serving the interest of the media. This whole issue with the media arose when in 1998, the SAHRC after it had received complaints of racism against the South African Mail

¹⁰¹ Nfor Gwei, S "The Cameroon experience in creating and running a national commission for the promotion and protection of human rights" in Hossain (n 1 above) 181.

¹⁰² Concluding observations of the Committee on the Rights of the Child: Cameroon 06/11/2001. CRC/C/15/Add.164. <[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.C.15.Add.164.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.C.15.Add.164.En?OpenDocument)> (accessed on 20 September 2002).

¹⁰³ Matlou (n 76 above) 6.

¹⁰⁴ Pityana (n 74 above) 637.

¹⁰⁵ Sarkin (n 73 above) 29.

¹⁰⁶ See Bisseker, C "Toothy bulldogs with no bite" *Financial Mail*, 3 October 1997; and Mvuko, V "Pityana faces court challenge" *Business day*, 2 April 1999.

and Guardian, declared them inadmissible but launched an inquiry into racism in the media.¹⁰⁷ Consequently, some observers noted that the Commission has more specific anti-media agenda than simply a disinterested desire to stamp out racism.¹⁰⁸ This strained the relationship between the Commission and the media. It is therefore faced with the challenge of working with an unresponsive media.¹⁰⁹

3.4 PROSPECTS FOR THE FUTURE

With regard to the NCHRF, it needs adequate resources and active co-operation on the part of the authorities, the media, NGOs, community based organisations and the population as a whole. It should be provided with adequate resources to carry out its own investigations without fear. Since lack of resources prevents the Commission from establishing provincial offices, it should create a strong relationship with the media by creating news worth stories. This will create awareness of their functions, increase accessibility, and will promote a culture of respect for human rights among the general public. However, the creation of these branches should still be a priority of the Commission, as they will make the Commission more accessible to those in remote parts of Cameroon who need its services the most.

More important is the concern that the ongoing exercise of reorganising the NCHRF should be completed as soon as possible so that the sectors of society not yet represented in the Commission are included. Adequate powers, such as power to subpoena witnesses and produce documents should be granted to the Commission, as this is essential to the effective functioning of the Commission. In sum, for the NCHRF to function effectively, the structural capacity of the Commission needs to be strengthened through:

- The increase of membership;
- The creation of branches;
- Engaging the necessary technical staff;
- Ensuring that its activities in the area of promotion and protection are carried out as planned; and
- Making the majority of its members more performant.

The SAHRC, on the other hand, should increase its efforts in providing a forum for some of the most advanced ideas of human rights to emerge, thus placing itself as the focal point of

¹⁰⁷ See Pityana, N "South Africa's Inquiry into the media: The role of national institutions in the promotion and protection of human rights" in (2000) 99 *African Affairs: Journal of the Royal African Society* 525 – 532.

¹⁰⁸ ICHR (n 10 above) 96.

¹⁰⁹ As above.

human rights discourse and practice in South Africa. This will go a long way to prevent the widespread criticisms of the role of the Commission. Although the SAHRC has assisted government departments to develop human rights education training manuals and has trained some people, it has been noted that not very much has been done to make this practical.¹¹⁰ The SAHRC should embark on massive education and information programmes and put all its plans around the achievement of equality into action to ensure general development for human rights for the common man on the street.

Furthermore, the SAHRC needs to prove itself on its new focus - the alleviation of poverty and eradication of inequalities. This is because the previous human rights agenda of the SAHRC had been criticised for focussing on “softer” human rights issues and ignoring core, major and difficult issues with major relevance to South Africa.¹¹¹ The SAHRC should also ensure that its members are given proper terms and conditions of employment, as this is crucial to the effective operation of the Commission. Parliament should also reform the way it handles the Commission’s reports, and credible arrangements be made regarding the allocation process of the budget of the Commission, as these will assist greatly in constructing an environment for a more credible and independent operations of the Commission.

3.5 CONCLUSION

From the foregoing discussion, it is clear that, despite all the above challenges faced by the NCHRF and the SAHRC, the most difficult challenge facing NHRIs is to ensure effective promotion and protection of human rights. All other challenges are just a stepping-stone to this major challenge. Additionally, recent challenges common to NHRIs include: handling of human rights violations outside their borders, and the HIV/AIDS pandemic, which is a serious internal challenge to HRCs especially for the SAHRC. The level of the pandemic in South Africa poses a serious and significant human rights challenge to the SAHRC. The Commission, in collaboration with civil society, should try to create an environment where the rights of people living with HIV/AIDS are protected.

However, the SAHRC must be commended regarding the fact that despite the challenges facing the Commission, it has made a laudable contribution to the development of human rights in South Africa. On the other hand, despite the efforts of the NCHRF, the challenges it faces far outweigh the effort it puts in to ensure effective promotion and protection of human rights. Furthermore, Matshekga has pointed out that establishing and maintaining

¹¹⁰ Sarkin (n 73 above) 31.

¹¹¹ Sarkin, J “The development of a human rights culture in South Africa” in (1998) 20 *Human rights quarterly: A comparative and international journal of the social sciences, humanities, and law* 651.

independent and effective NHRIs are challenges that all governments have to meet.¹¹² Therefore, where such institutions are established, it should not be the sole responsibility of a NHRI to ensure the promotion and protection of human rights. The government should also have as its primary responsibility to ensure that the NHRI achieves what it was set out to do, namely to protect and promote human rights.

¹¹² Matshekga, J "Toothless bulldogs: The Human Rights Commissions of Uganda and South Africa: A comparative study of their independence" (2000) 2 *African human rights law journal* 90.

CHAPTER FOUR

JURISPRUDENCE OF NATIONAL HUMAN RIGHTS INSTITUTIONS: THE CASE OF THE NCHRF AND THE SAHRC

4.1 INTRODUCTION

Human rights law, whether in the form of international commitments or domestic protection, proclaims that violations of human rights are prohibited and should be redressed.¹¹³ Article 2 of the International Covenant on Civil and Political Rights (ICCPR), 1966 enjoins State parties to introduce the necessary steps in accordance with their constitutional processes and with the provisions of the Covenant to give effect to the rights recognised in the Covenant. It is on this basis, and the fact that victims themselves seek remedies to address human rights violations, that NHRIs undertook to address the unabated human rights violations. Therefore, an understanding of human rights law requires the consideration of the work of these institutions that interpret human rights norms found in international and regional instruments and also their own constitutions and statutes.

Even though these institutions may not have the power to make legal determinations, their contribution to human rights jurisprudence is significant.¹¹⁴ The case law of these institutions can therefore not be ignored as it often provides a progressive interpretative approach, although not always legally binding, but at times more creative than those found in judicial decisions.¹¹⁵ However, a consideration of judicial decisions is also important since judicial bodies work in collaboration with these institutions. In addition, the decisions of NHRCs could be regarded as “soft” jurisprudence since they are not legally binding but are important because they, more often than not and depending on the nature of a particular complaint, eventually results into a ruling by a court.

4.2 JURISPRUDENCE OF NHRCs

A discussion of the jurisprudence of NHRCs, in particular the NCHRF and the SAHRC, is vital because human rights jurisprudence in general reveals that the bulk of decision-making involving human rights violations are made at the domestic level. This includes

¹¹³ Orlin, T et al (eds) (2000) *The jurisprudence of human rights law: A comparative interpretative approach* 1.

¹¹⁴ “Jurisprudence” has been defined as the science of law namely, that science which has for its function to ascertain the principles on which legal rules are based, so as not only to classify those rules in their proper order, and show the relation in which they stand to one another, but also to settle the manner in which new or doubtful cases should be brought under the appropriate rules. See Black’s Law Dictionary, 6th edition, 1990 (emphasis added by Orlin, T and Scheinin, M (see n 134 above 2)).

¹¹⁵ Orlin (n 113 above) 15.

decisions of courts, NHRCs and that of other human rights committees referred to or cited by a NHRC. In general, human rights jurisprudence is important in that it gives a further insightful meaning to the rights that are found in the protective instruments. Also, multiple decisions dealing with the same rights give diversity to human rights. Additionally, opinions by NHRCs, which seek to protect human rights, consider some contemporary issues important to human rights jurisprudence. This chapter will provide an overview of complaints handled by the NCHRF and the SAHRC and the jurisprudence of both Commissions making reference to some of the cases where certain rights have been widely interpreted and applied by the NCHRF and the SAHRC.

However, the jurisprudence that will be discussed is not confined to specific pronouncements of the above two HRCs but also of those of courts and of other human rights committees on violations in the domestic arena of both Commissions. The decisions of these courts and human rights committees are important because in handling complaints or carrying out investigations, NHRCs rely on these decisions and on international jurisprudence as a whole.¹¹⁶ In addition, given that the growing body of human rights law comprises of human rights instruments, international and domestic judicial opinions, legal commentaries and arguments which seek to protect human rights, it is therefore relevant that decisions of courts or other human rights committees be discussed as they add to the jurisprudence of a NHRC. The decisions of the above bodies is also important to consider since the function of jurisprudence is to consider the ultimate effect of which would be produced if a rule was applied to an indefinite number of similar cases, and to choose a rule that, when so applied, will produce the greatest advantage to the community.¹¹⁷

4.3 LEGAL BASIS FOR HANDLING COMPLAINTS BY THE NCHRF AND THE SAHRC

Section D of the Paris Principles states that “ a national institution may be authorised to hear and consider complaints and petitions concerning individual situations”. It further provides for cases to be brought before such an institution, and for the institution to seek an amicable settlement, hear the complaints or make recommendations. Bearing this in mind, governments have established NHRIs with the power to address complaints. Article 2 of the 1990 Decree creating the NCHRF empowers the Commission to “conduct all inquiries and carry out all necessary investigations on violation of human rights and freedoms”. This together with the Paris Principles forms the legal basis for handling of complaints by the NCHRF.

¹¹⁶ Article 60 of the ACHPR expressly allows a NHRC to use international jurisprudence when interpreting the rights in the ACHPR.

¹¹⁷ Orlin (n 113 above) 2.

With regard to the SAHRC, section 184(1) of the Constitution of the Republic of South Africa, 1996 obliges the Commission to “promote the protection of human rights”. Section 9 of the Human Rights Commission Act, 1994 further empowers the Commission to deal with complaints from the public. Under section 10 of this same Act, the SAHRC is given the power to enter and search premises and attachment and remove articles relevant to an investigation. The above therefore form the legal basis for handling of cases by the SAHRC.

It should be note that investigations conducted by NHRIs do not resemble civil or criminal proceedings before a court of law. However, these institutions have a formal procedure for examination of witnesses, although they tend to stress their preference for conciliation.¹¹⁸

4.4 AN OVERVIEW OF COMPLAINTS HANDLED BY THE NCHRF AND SAHRC

The NCHRF investigates complaints lodged with it or which comes to its notice. Complaints may be submitted either in writing, verbally or in very few cases by telephone. During the year 1998, the Commission received 118 local complaints and 1240 complaints from abroad.¹¹⁹ However, the number of local complaints has been increasing from 89 in 1997, 118 in 1998, to 135 in 1999. The increase in local complaints shows an increase in the public’s confidence in the Commission. Most of the complaints concerned civil and political rights and a few on socio-economic rights. During the year 2000, the NCHRF received 698 complaints – 154 on socio-economic rights and 544 on civil and political rights.¹²⁰ This shows an increase in the number of complaints on socio-economic rights. However, complaints on civil and political rights still remain the highest.¹²¹ This has been influenced by the Western human rights paradigm, which focuses mainly on civil and political rights.

Regarding the SAHRC, during the period 2000 – 2001, the SAHRC (Head Office) handled 6265 complaints, 32 percent of which were based on the right to equality, forming the highest percentage.¹²² This is far more than the number of complaints handled by the NCHRF. A complaint handling data base is being installed and is near completion, which will enable the Commission to call up reports according to rights violated.¹²³ It is clear that this will make the Commission more effective in handling cases than the NCHRF, which does not have a complaints database. The number of complaints received in some of the branches is as follows: Gauteng and North West Province – 2037, Eastern Cape – 801,

¹¹⁸ For example, the Commissions in Togo and Benin have an elaborately defined procedure for investigation.

¹¹⁹ The NCHRF: Three year progress Report, 1997 – 1999 12.

¹²⁰ The NCHRF: Annual Report 2000 14.

¹²¹ As above 23.

¹²² SAHRC: 5th Annual Report 25.

¹²³ As above.

Kwa-zulu Natal – 984, Mpumalanga and Northern Province – 479, and Western Cape and Northern Cape Province – an average of 70 complaints received per month.¹²⁴

From the aforementioned, the SAHRC appears to be complaints driven. However, Pityana has stated that the Commission has no desire to be complaints driven. The reason being that the SAHRC fears that individual complaints themselves do not necessarily indicate areas of greatest need or address the concerns of the most vulnerable members of the community.¹²⁵ Although the above can be true to an extent, these complaints to a larger extent do indicate areas of greatest need and in some cases, do indicate trends of violations prevalent in a particular society. Moreover, as evident from the SAHRC, there is a greater need for the NCHRF to create branch offices, as this will enable the Commission to handle more cases. Thus addressing more violations of human rights in Cameroon, which will in the long run increase its ability to protect human rights in the country.

4.5 JURISPRUDENCE OF THE NCHRF

It is worth noting that the decision of the NCHRF is not final. Article 2 of the 1990 Decree creating the Commission provides that cases of violations of human rights and freedoms be referred to the competent authorities, such as courts. However, the recommendations made by the Commission go a long way to add to the existing human rights jurisprudence and also set down precedents that other Commissions could follow. Therefore, it is important to refer to decisions of courts in Cameroon on the interpretation of rights in the Cameroon Constitution and also decisions of other human rights bodies on violations in Cameroon.

An important case dealt with by the NCHRF is the *Operational Command Unit Case* (OCU Case).¹²⁶ This case is important because the Commission gave an additional interpretation to the right to human dignity. This right is guaranteed in the preamble of the 1996 Constitution of Cameroon. It should be noted that this right is not expressly stated as is done in the South African Constitution, 1996. But, it is expressly stated in other human rights instruments – UDHR and ACHPR – which Cameroon affirms its attachment to. The OCU was set up in February 2000 to combat street crime in Douala and Yaounde of Cameroon. This unit was reportedly responsible for killing criminal suspects, carrying out beatings, rapes and other ill treatments of detainees.¹²⁷ Subsequently, the NCHRF received series of complaints regarding human rights violations in Douala by this unit. The NCHRF

¹²⁴ As above 25 – 29.

¹²⁵ Pityana (n 74 above) p 633.

¹²⁶ The NCHRF: Annual Report 2000 16 – 17.

¹²⁷ Covering events from January – December 2000 <<http://www.amnesty.org>> (accessed on 28 September 2002).

carried out field investigation and its findings revealed that the OCU had made serious blunders in discharging its duties. The NCHRF made a number of recommendations amongst which was this important recommendation:

The Douala council should put an end to the practice of mass graves such as that observed at the Bois des Singes¹ cemetery. The dignity of the human person imposes on society the obligation to ensure a decent burial for its dead.

From the above case, not giving a decent burial to a dead person is a violation of the right to dignity. Therefore, the right to dignity cannot only be respected when a person is alive but even after the person is dead. Furthermore, it is clear that the basis for this decision stems from the African notion of human rights in which the dead have the same rights as the living.

It is important to highlight a few cases dealt with by the NCHRF, as stated in its Annual Report.¹²⁸ This is because the jurisprudence of the NCHRF is too poor to require any extended analysis. The NCHRF received a complaint regarding the beating to death of Yves Atibak during the night of 18 – 19 January 1999. The gendarme found guilty of violating the deceased's right to life is currently under preventive detention. Similarly, regarding the torture and death of Mr. Emile Naah Njoch at Nkol-Ndong, the torture to death on 30 May 2000 of Leuwat Edouard at the Special Operation Unit and the beating up and eventual death of Mr. Hervé Diesse in Bafoussam, the NCHRF carried out investigations and later referred the matters to the appropriate authorities. Those found guilty were arrested and are currently under detention. Furthermore, the NCHRF received complaints regarding violation of the rights of prisoners at the Yaoudé Central Prison at Kondengui. On 9 May 2000, it visited the Prison and made several recommendations. The Commission stressed the importance of the right of access to health care and the right to fair hearing guaranteed in the Cameroon Constitution. It urged the government to take steps to ensure respect for these rights.

With regard to cases dealt with by courts, the right to defence has been interpreted in the *SCNC Trial*¹²⁹ ruling by Abea Abednego, President of the Bamenda Court of First Instance in a manner relevant to the NCHRF. The preamble of the 1996 Constitution of Cameroon provides that “every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence”. The case concerned the

¹²⁸ The NCHRF: Annual Report 2000 14 – 21.

¹²⁹ Ruling of 29 October 2001 in the Court of First Instance, Bamenda. <<http://www.groups.yahoo.com/groups/camnetwork>> (accessed on 5 December 2001). The right to defence was also interpreted by Abea Abednego in the following cases: *The People v Dr. Luma Martin N. & 12 Others* (BA/202c/00-01); *The People v Nya Henry T. & 5 Others* (BA/215c/01-02); and *The People v Fowedji Chia Joseph* (BA/ 203c/01-02).

arrest of five SCNC members. The accused were not called upon to enter a plea before Abea Abednego and were not released as stated in a court order (releasing the five accused on bail) as a result of instructions of the Procureur General of the North West Province, the highest officer in charge of public prosecutions in this province. This raised the question whether the department in charge of public prosecutions had in fact presumed that the five accused were innocent. Abea Abednego's answer to this question was that by refusing to carry out the court order, the five accused have been brought before him as people presumed guilty that he must convict. He cited the right to defence in the preamble of the Constitution stating that the presumption of innocence "is a matter of law and fact". He concluded that the fact that the court order was not implemented means that the five accused have been presumed guilty, thus amounting to a violation of their constitutional right of presumption of innocence.¹³⁰ He ruled that the presumption of innocence of the five accused has been violated.¹³¹

The above ruling shows the importance of the right to defence in any trial and indicates that the right to defence also requires legal departments to implement a court's order regarding an accused. The case points out that refusal to release an accused on bail as ordered by the court means the legal department is convinced that the accused is guilty thus denying the accused of his or her right of presumption of innocence. This ruling is very important as it provides a wider interpretation of the right to defence that is frequently violated in Cameroon. Subsequently, the NCHRF makes reference to this decision when deciding cases on the right to defence.¹³²

Furthermore, looking at human rights protection broadly, the Human Rights Committee¹³³ has interpreted freedom of expression in a manner that is relevant to the NCHRF. The Preamble of the 1996 Constitution of Cameroon guarantees freedom of expression. Decisions on this right are very important, as the right is constantly violated in Cameroon. The Committee laid down precedence in *Mukong v. Cameroon*¹³⁴, which the NCHRF refers to when deciding cases concerning this right. The case concerned an allegation by Mukong that the Cameroon government has violated his right to freedom of expression guaranteed in the Constitution of Cameroon and section 19 of the ICCPR. The Committee was of the opinion that the above right has been violated and ordered the government to respect Mukong's right to freedom of expression. This case is a landmark case in that the

¹³⁰ He stated that this right is not only a constitutional right but also a human right since Cameroon affirms its attachment to the UDHR. Article 2 of the UDHR provides that "everyone charged with a penal offence has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has all the guarantees necessary for his defence".

¹³¹ It was ordered in the *SCNC Trial*'s ruling that the NCHRF be served with a copy of the ruling.

¹³² This can be seen in the numerous number of cases the NCHRF has handled and later referred them to the competent authorities on the right to defence of arrested, accused and detained persons.

¹³³ Established under article 28 of the ICCPR

¹³⁴ Harris, D (1988) *Cases and materials on international law* 285.

Committee laid down guidelines for the restriction of the right to freedom of expression. The Committee stated:

Any restriction pursuant to article 19(3) of the ICCPR must cumulatively meet the following conditions: it must be provided for by law, it must address one of the aims enumerated in paragraph 3(a) and (b) of article 19 [that is, the restriction must be necessary for the respect of the reputation of a person or for the protection of public order and morals], and must be necessary to achieve the legitimate purpose.

The above serves as guidelines and a point of reference for the NCHRF when dealing with cases on violation of the right to freedom of expression. It is worth noting that most of the complaints, petitions and incidents dealt with by the NCHRF includes, together with the above rights: the right to life, right to vote, right to free and fair trial, freedom of movement and many others.

4.6 JURISPRUDENCE OF THE SAHRC

The jurisprudence of the SAHRC on the other hand is far more enriching than that of the NCHRF. In my view, the reason behind this is that the Commission is surrounded by a lot of jurisprudence at the national level to make reference to, especially that of the Constitutional Court. In addition, human rights are far more explicitly stated in the South African Constitution than that of Cameroon. This places the Commission in a better position, than the NCHRF, to address human rights violations. Moreover, some of the rights in the Cameroon Constitution are vaguely stated or too narrow to warrant protection. However, the Constitutional Court in *de Lange v Smuts NO and Others*¹³⁵ pointed out that the South African Bill of Rights provides protection in broad unqualified terms. Although this might be true with respect to some of the rights, this statement cannot be made with respect to all of the rights. That was why the court made no further conclusion after stating the above. Furthermore, same as the NCHRF, the SAHRC makes recommendations, which although not legally binding could be regarded as “soft” jurisprudence. From the above, it is clear that while looking at the jurisprudence of the SAHRC, that of courts cannot be ignored especially in cases where the Commission intervenes as *amicus curiae* (friend of the court).

The SAHRC has handled several cases on the right to equality. As stated earlier, most of the complaints received by the Head Office are based on this right. The right to equality is provided for in section 9 of the 1996 Constitution of South Africa. As stated in the Constitution, this right includes the full and equal enjoyment of all rights and freedoms. In

¹³⁵ 1998 (3) SA 785 (CC), para 45 at 804.

Trevor Oliphant v Department of Health,¹³⁶ the Commission had to deal with a complaint concerning the Department of Health's rejection of Mr Oliphant's application for bursary on the basis that he was above the age of 30. The Commission viewed this as *prima facie* unfair discrimination on the basis of age. The Department of Health's explanation that the exclusion was in terms of an agreement reached with the government of Cuba was unacceptable. The Commission, after its investigation, stated: "no person may contract out of the Constitution". This point is a vital contribution to human rights jurisprudence as it prevents contracts that are not in accordance with the Constitution and which violate rights enshrined in the Constitution.

Also, the SAHRC has received a number of complaints based on the right of access to health care, provided for in section 27(1) of the 1996 Constitution of South Africa. In *Dr Costa Gazi Case*,¹³⁷ the complaint brought by Dr Gazi concerned refusal by government, in government hospitals, to give anti-retroviral medication to pregnant women who are HIV positive. After an investigation, the Commission concluded that this refusal amounted to a violation of the right of access to health care services - thus, *prima facie* violations of section 27(1) and (2) of the Constitution. This decision is very important as it gives a broader interpretation to the above right thus adding to the progressive realisation of socio-economic rights in South Africa. It should be noted that in response to the Commission's decision, the Minister of Health agreed, subject to certain conditions, to allow the use of Nevirapine at state expense in pilot projects at selected hospitals.

Furthermore, as stated before, the Commission has been involved in socio-economic rights cases. The right of access to housing and shelter (provided for in section 28 of the South African Constitution, 1996) has been considered by the South African Constitutional Court in *Government of the Republic of South Africa v Grootboom*,¹³⁸ in which the SAHRC acted as *amicus curiae*. It should be noted that this is just a right of "access" to housing and shelter and different from the "right to adequate housing" provided for in article 11 of the ICESCR. This case concerned the eviction of 500 children and 300 adults from a municipal land that they were occupying. Their application to the Cape High Court requesting that the State be ordered to provide shelter or housing for them was refused. The Cape High Court however pointed out that the children have a right to shelter and not to be separated from their parents. It therefore issued an interdict preventing their eviction.

¹³⁶ SAHRC: 5th Annual Report 32. The Commission's findings revealed the following: Firstly, the age requirement of the bursary scheme established by the South African and Cuban government is in violation of Section 9(3) of the South African Constitution, which prohibits the State from unfairly discriminating against persons on the basis of age; and secondly, the failure to provide Mr Oliphant with written reasons at the time of the rejection impacts on his right to just administrative action as protected under section 33(2) of the South African Constitution.

¹³⁷ SAHRC: 5th Annual Report 30.

¹³⁸ 2001 (1) SA 46 (CC).

The case was later heard in the Constitutional Court, with the SAHRC acting as *amicus curiae*.¹³⁹ The SAHRC felt that the case was vital in showing that the Bill of Rights can be of practical benefit to vulnerable and marginalized people.¹⁴⁰ The SAHRC was also of the view that socio-economic rights give substance and meaning to the South African Constitution. The State proposed an offer of settlement and the respondents were willing to accept “weatherproof” shelter. Although the final judgment of this case was not what the community expected, the case is however a landmark case as it lays down a base for the protection of socio-economic rights of the most vulnerable and marginalized people in South Africa. In my view, it is a case that the NCHRF could make reference to, as the right to shelter and housing has not been subject to much interpretation in Cameroon.

Considering investigations by HRCs, the SAHRC has carried out investigations and made recommendations that have given added meaning to some of the rights in the South African Bill of Rights. One of such investigations is that on initiation practices. The Minister of Education approached the SAHRC requesting an investigation into initiation practices at both schools and higher education institutions with a view to making recommendations directed at the institutions as well as government. The Minister had the objective that any such recommendations should assist in the regulation of initiation practices, which could cause harm to learners and students.¹⁴¹

The Commission carried out an investigation, which revealed the following: That the practice of initiation seeks to undermine the intrinsic worth of human beings by treating some as inferior to others; that initiation practices undermine the values that underpin the South African Constitution; and that initiation practices therefore impedes the development of a true democratic culture that entitles an individual to be treated as worthy of respect and concern. The SAHRC therefore pointed out that initiation practices violate a wide-ranging number of rights depending on the nature of the practice. The rights in the South African Constitution that are being violated are: Human dignity (sections 10), right to life (section 11), freedom and security of the person (section 12), freedom of movement and residence (section 21), health care, food, water and social security (section 27), children’s rights (section 28), right to education (section 29), language and culture (section 30), cultural, religion and linguistic communities (section 31), and many others. The SAHRC then recommended that the Department of Education convene an *Indaba* in which all the relevant stakeholders participate to develop a legal framework, which the organisers of initiation schools have to comply with. This recommendation has been taken into

¹³⁹ The Community Law Centre also acted as *amicus curiae* in this case.

¹⁴⁰ SAHRC: 5th Annual Report 34.

¹⁴¹ South African Human Rights Commission: Report into initiation practices at educational institutions and a preliminary report on cultural initiations, October 2001 <http://www.sahrc.org.za/main_frameset.htm> (accessed on 1 October 2002).

consideration as the South African government is developing a legal framework to regulate such practices.

The above investigation, though “soft” jurisprudence is important as it adds to the jurisprudence of the SAHRC. It lays a foundation for the protection of the rights of those who take part in initiation practices. This is an important jurisprudence for Cameroon to follow since such practices take place in some parts of Cameroon, yet nothing has been done to protect the rights of those involved.

4.7 CONCLUSION

From the aforesaid, it is clear that the decisions of the NCHRF and the SAHRC and those of courts and other bodies collaborating with these Commissions have added considerably to the body of human rights jurisprudence. The NCHRF for example, although with considerable obstacles and constraints, has contributed to the understanding of human rights by bravely interpreting an application of human rights law different than the government.¹⁴² Although, very few cases have been discussed here, it is clear that the opinions of these Commissions and other judicial opinions these Commissions rely on provides new insights to the development of human rights law and jurisprudence. The discussion of a limited number of cases is, to a larger extent, due to the unavailability of detail report of cases to the public. This is a serious problem that most institutions need to address, especially the NCHRF. They should endeavour as part of their promotional mandate, to publicise cases handled by them, which should give a clearer picture of all the facts.

It is worth noting that despite the limited jurisprudence of NHRCs, they however enhance the understanding of human rights and adds to the further development of the protection of human rights. The jurisprudence of NHRCs, national courts and other human rights bodies have added additional important and diverse experiences to the growth of human rights jurisprudence in the African system where, at present, there is no human rights court in operation, like that in the European system, to redress violations of individual human rights.

¹⁴² Orlin (n 113 above) 15.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

This chapter provides a brief summary of what has been discussed in the foregoing chapters. The chapter concludes by accentuating a number of recommendations for NHRIs in general and the NCHRF and the SAHRC in particular. The recommendations involve what NHRIs or Commissions, governments, civil society and other institutions can do to ensure effective protection and promotion of human rights.

5.2 CONCLUSION

There has been a lot of debate surrounding the ability of NHRIs to ensure respect for, and promotion and protection of human rights. This dissertation has contributed to this emerging debate in several ways. It has shown that it is vital for a standard to exist at the national, regional and international levels by which NHRIs must conform to. These standards should not be totally regarded as mere normative standards as they form the basis for the establishment of most NHRIs. However, NHRIs must not only conform to such standards but the government, civil society and the institutions themselves must be committed to promoting and protecting human rights. Furthermore, the study has demonstrated that the challenges NHRIs are faced with affect, to an extent, their level of efficiency in promoting and protecting human rights. Therefore, unless NHRIs work towards eliminating those challenges, they would not be able to, in the near future, offer effective protection and promotion of human rights.

Drawing from the experiences of the NCHRF and the SAHRC, this dissertation reveals that despite the numerous challenges facing NHRIs, in particular the NCHRF and the SAHRC, NHRIs can contribute to greater respect for human rights as well as increase awareness especially among ordinary people. They have adopted strategies to educate people on their rights and sound mechanisms outside costly court processes to provide redress for human rights violations. It should be noted that the impact of NHRIs would be necessarily varied and complex, leading only in some instances to human rights improvements. As revealed by this study, there is no doubt that NHRIs contribute to respect for, and promotion and protection of, human rights. However, their contribution to greater respect for human rights can only be maintained if the government, civil society and the institution themselves are committed to the promotion and protection of human rights.

5.3 RECOMMENDATIONS

5.3.1 Legitimacy

Generally, NHRIs should be incorporated in national constitutions, as is the case with the SAHRC and others. This is the single legal measure most likely to guarantee their public legitimacy since they will appear to belong to the nation as a whole. Governments should endeavour not to establish NHRIs when it finds it is under pressure, especially internationally, because in such circumstances, it will be much more difficult for an institution to win public legitimacy.

5.3.2 Mandate

The mandate of a NHRI should be proportionate to the challenges the institution is to face. The mandate should be broad so as to give the NHRI all the powers that will enable it to effectively protect human rights. The NCHRF should be mandated to appear in court, as this will improve its ability to handle complaints effectively. It is also an important and effective way of establishing an institution's credibility. Lastly, the mandate of NHRIs should include the power to monitor government fulfilment of international and regional human rights treaties and human rights obligations under domestic law. This should include, in the case of the NCHRF, the power to monitor and report independently on its own behalf, not on behalf of the government. NHRIs should therefore recommend and facilitate the signature, ratification or accession of their respective States to new human rights treaties.

5.3.3 Economic, social and cultural rights

All the sets of rights must have equal importance - economic, social and cultural rights must get equal attention with civil and political rights. The SAHRC should endeavour to give equal attention to all the sets of rights. Economic, social and cultural rights should be explicitly stated in the Cameroon Constitution, like is the case with the South African Constitution since NHRIs have a potentially crucial role to play in the further development and recognition of these rights. Like the SAHRC, other HRCs should have the power to adopt innovative techniques to monitor implementation of socio-economic rights, to commission studies and to evaluate reports with regard to progress in implementation. Those NHRCs that deal with specific issues of socio-economic rights such as discrimination, should consider broadening their mandate to enable them address systematic issues of socio-economic rights. Lastly, NHRCs in general, and the NCHRF in

particular, should create greater awareness among people on bringing complaints on socio-economic rights.

5.3.4 Decisions of NHRCs

A NHRC should have the capacity to make binding decisions. They should be able to communicate their recommendations confidently to government and with the expectations that they will be implemented. The decisions of NHRCs should be registered in courts and executed in the same way as court judgments. Additionally, the government should undertake an obligation to respond, within a reasonable time, to the findings, conclusions and recommendations made by the NHRC. This is because the government's timely response will improve the effective functioning of the NHRC. NHRCs should monitor their recommendations to ensure that they are effectively implemented. Lastly, provisions should be made for appeal against the decisions of NHRCs so as not to leave the aggrieved party in an uncertain position on what course of action to take.

5.3.5 Members and staffing

NHRIs should be staffed by a socially representative group of people in line with the Paris Principles. Diversity in membership is important, as it will increase independence, public legitimacy and accessibility of a NHRI. The members should be selected on the basis of proven expertise, knowledge and experience in the promotion and protection of human rights and must have strong, independent and effective leadership skills. The appointment procedure of the NCHRF should provide for adequate consultation with civil society and should be under the control of a branch of government separate from the executive.

5.3.6 Financial and human resources

The issue of resourcing a NHRI is very important as the institution's ability to function effectively will be impaired if it has inadequate financial and human resources.¹⁴³ It is recommended, especially in the case of the NCHRF and the SAHRC, that channels governing allocation of resources be clear and free of bureaucracy to allow for speedy claims. Moreover, a NHRI should have the financial means to employ professionally competent staff able to carry out the tasks of the Commission. In sum, funding should be secured with long-term perspective to enable the NHRI plan and develop its activities with confidence about being able to fulfil them.

¹⁴³ Interview with Brian Burdekin <<http://www.dailystarnews.com/law/200101/05/interview.htm>> (accessed on 26 September 2002).

5.3.7 Accessibility

NHRIs should endeavour to establish branch offices, which must be stationed in appropriate places so as to increase the NHRI's accessibility to the public. The SAHRC should try to allocate its provincial offices close to rural villages, as the people in these villages need the services of the Commission the most. The NCHRF should endeavour to see that it establishes branch offices in other provinces in the country, as this will increase its accessibility to the public. Moreover, mechanisms should allow local offices a positive role in following up cases. The procedures of laying a complaint should be as simple as possible so that illiterate people who suffer from violations will be able to access the institution. The SAHRC and the NCHRF should ensure effective communications between itself and potential complainants. Additionally, the NCHRF should create facilities such as private meeting rooms within its Head Office so that complainants can discuss their complaints with the institution's staff in confidence.

5.3.8 Accountability

NHRIs should report regularly to the legislature on their operations, and should be free to issue public statements and publish reports on matters at its own discretion. The SAHRC and the NCHRF should endeavour to keep to their reporting obligations and regular reports should be as far as possible issued quarterly, half-yearly or yearly. In sum, NHRIs should report publicly on their activities and be held accountable for their results. Accountability of NHRIs is very important, as ineffective NHRIs that do not address human rights violations can be an instrument of impunity.

5.3.9 Civil society involvement

NHRIs should develop a strong relationship with a variety of organs of civil society, such as the media in order to create awareness of their functions and to promote a culture of respect for human rights among the general public. The NCHRF and SAHRC should improve their relations with NGOs and be able to work closely with a wide range of NGOs, or with specific vulnerable groups such as organisations of women, children, HIV-positive persons or persons with disabilities. A formal standard should be put in place that will help structure relations between the above groups and NHRIs. These groups should be consulted regularly about the institution's priorities and be partners in the day-to-day work of the institution. Furthermore, the consultation process on and about the establishment of new NHRIs should include representatives of civil society. The consultation process should be transparent, adequate, effective and properly resourced to ensure proper consultation.

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ANNEXURE A

PRINCIPLES RELATING TO THE STATUS AND FUNCTIONING OF NATIONAL INSTITUTIONS FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS (The Paris Principles)

A. Competence and responsibilities

1. A national institution shall be vested with competence to protect and promote human rights.

2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, *inter alia*, have the following responsibilities:

(a) To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicize them. These opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:

(i) Any legislative or administrative provisions, as well as provisions relating to judicial organization, intended to preserve and extend the protection of human rights. In that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations, as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;

(ii) Any situation of violation of human rights, which it decides to take up;

(iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;

(iv) Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such

situations and, where necessary, expressing an opinion on the positions and reactions of the government;

b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;

d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;

e) To cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;

f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;

g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

B. Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;

b) Trends in philosophical or religious thought;

c) Universities and qualified experts;

- d) Parliament;
- e) Government departments (if they are included, these representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

C. Methods of operation

Within the framework of its operation, the national institution shall:

1. Freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
2. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
3. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
4. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted;
5. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
6. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions);
7. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental

organizations devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

D. Additional principles concerning the status of commissions with quasi-judicial competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

1. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
2. Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
3. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
4. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

ANNEXURE B

DECREE NO. 90-1459 OF 8 NOVEMBER 1990

to set up the National Commission on Human Rights and Freedoms.

The President of the Republic of Cameroon,

Mindful of the Constitution;

Mindful of the Universal Declaration of Human Rights;

Mindful of the African Charter on Human and Peoples' Rights,

Hereby decrees as follows:

1. (1) A National Commission on Human Rights and Freedoms hereinafter referred to as the <<Commission>> is hereby set up.

(2) The Commission shall have legal status and financial autonomy.

(3) Its headquarters shall be Yaounde.

(4) It may have branches in other towns.

2. The Commission shall be charged with the defence and promotion and protection of human rights and freedoms. In this capacity, it shall:

- receive all denunciations relating to violations of human rights and freedoms;
- conduct all enquiries and carry out all the necessary investigations on violation of human rights and freedoms and report thereon to the President of the Republic;
- refer cases of violations of human rights and freedoms to the competent authorities;
- as and when necessary, inspect all types of penitentiaries, police stations and gendarmerie brigades in the presence of the State Council with jurisdiction or his representative. Such inspections may lead to the drafting of a report submitted to the competent authorities;
- study all matters relating to the defence and promotion of human rights and freedoms;
- propose to public authorities measures to be taken in the area of human rights and freedoms;
- popularise by all possible means instruments relating to human rights and freedoms;
- collect and disseminate international documentation relating to human rights and freedoms;

- co-ordinate, where necessary, the activities of non-governmental organisations wishing to participate in its tasks and whose state objective is to work in Cameroon for the defence and promotion of human rights and freedoms;
- maintain, where necessary, relations with the United Nations Organization, international organizations, and foreign committees or associations pursuing humanitarian objectives, and inform the Minister in charge of external relations thereon.

3. The resources of the Commission shall be derived from State grants, gifts and legacies from various sources, and proceeds from its studies.

4. (1) The Commission shall comprise the following:

Chairman: a neutral person;

Members: 3 representatives of the government, one of whom shall come from the Ministry of Justice, keeper of the Seals;

- 2 representatives of the Supreme court who shall be members of the bench;
- 1 representative of each political party represented in the National Assembly;
- 2 representatives of the Bar;
- 2 lecturers in Law;
- 4 representatives of religious denominations;
- 1 representative of local authorities;
- 2 journalists of the public and private press;
- 1 representative of the Economic and Social Council;
- 2 representatives of women's organisations.

(2) The Chairman and members of the Commission shall be appointed by decree of the President of the Republic for a five-year term.

(3) An alternate member shall be appointed for every member following the same criteria.

5. The Commission shall elect from amongst its members a Vice-President, a Secretary, an Assistant Secretary, a Treasurer and Assistant Treasurer.

6. The Commission shall draw up internal regulations to govern its functioning.

7. The Commission may set up working groups whose duties shall be determined by the internal regulations.

8. (1) The Commission shall forward an annual report to the President of the Republic on the State of human rights and freedoms.

(2) It shall prepare an annual progress report of its activities to the President of the Republic.

9. This decree shall be registered, published according to the procedure of urgency and inserted in the *Official gazette* in English and French.

Yaounde, 8 November 1990

Paul Biya

President of the Republic of Cameroon

ANNEXURE C

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA 1996

**As adopted on 8 May 1996 and amended on 11 October 1996 by the Constitutional
Assembly**

Act 108 of 1996

ISBN 0-620-20214-9

Chapter 9

State Institutions Supporting Constitutional Democracy

181. (1) The following state institutions strengthen constitutional democracy in the Republic:

- a. The Public Protector.
- b. The Human Rights Commission.
- c. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.
- d. The Commission for Gender Equality.
- e. The Auditor-General.
- f. The Electoral Commission.

(2) These institutions are independent, and subject only to the Constitution and the law, and they must be impartial and must exercise their powers and perform their functions without fear, favour or prejudice.

(3) Other organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of these institutions.

(4) No person or organ of state may interfere with the functioning of these institutions.

(5) These institutions are accountable to the National Assembly, and must report on their activities and the performance of their functions to the Assembly at least once a year.

Functions of Human Rights Commission

184. (1) The Human Rights Commission must -

- (a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights in the Republic.

(2) The Human Rights Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power -

- (a) to investigate and to report on the observance of human rights;
- (b) to take steps to secure appropriate redress where human rights have been violated;
- (c) to carry out research; and
- (d) to educate.

(3) Each year, the Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.

(4) The Human Rights Commission has the additional powers and functions prescribed by national legislation.

ANNEXURE D

OFFICE OF THE PRESIDENT

No. 2095

7 December 1994

NO. 54 OF 1994: HUMAN RIGHTS COMMISSION ACT, 1994.

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

ACT

To regulate matters incidental to the establishment of the Human Rights Commission by the Constitution of the Republic of South Africa, 1993; and to provide for matters connected therewith.

PREAMBLE

WHEREAS sections 115 up to and including 118 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), provide for the establishment of a Human Rights Commission; the appointment of the members of the Commission; the conferring of certain powers on and assignment of certain duties and functions to the Commission; the appointment of a chief executive officer of the Commission; and the tabling by the President in the National Assembly and the Senate of reports by the Commission;

AND WHEREAS the Constitution provides that the Human Rights Commission shall, inter alia, be competent and obliged to promote the observance of, respect for and the protection of fundamental rights; to develop an awareness of fundamental rights among all people of the Republic; to 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 the Constitution; to undertake such studies for report on or relating to fundamental rights as it considers advisable in the performance of its functions; to request any organ of state to supply it with information on any legislative or executive measures adopted by it relating to fundamental rights; and to investigate any alleged violation of fundamental rights and to assist any person adversely affected thereby to secure redress;

AND WHEREAS the Constitution envisages further powers, duties and functions to be conferred on or assigned to the Human Rights Commission by law, and that staff of the Commission be appointed on such terms and conditions of service as may be determined by or under an Act of Parliament;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act unless the context otherwise indicates-

- (i) "Chairperson" means the chairperson of the Commission referred to in section 115(1) and (5) of the Constitution;
- (ii) "Commission" means the Human Rights Commission established by section 115(1) of the Constitution;
- (iii) "Committee" means a committee established under section 5;
- (iv) "Fundamental rights" includes the fundamental rights contained in Chapter 3 of the Constitution;
- (v) "Investigation" means an investigation under section 9;
- (vi) "Organ of state" includes any statutory body or functionary;
- (vii) "Premises" includes land, any building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container; and
- (viii) "Private dwelling" means any part of any building or structure which is occupied as a residence or any part of any building or structure or outdoor living area which is accessory to, and used wholly or principally for, the purposes of residence.

Seat of Commission

2 (1) The seat of the Commission shall be determined by the President.

(2) The Commission may establish such offices as it may consider necessary to enable it to exercise its powers and to perform its duties and functions conferred on or assigned to it by the Constitution, this Act or any other law.

Term of office of members of Commission

3. (1) The members of the Commission referred to in section 115(1) of the Constitution may be appointed as full-time or part-time members and shall hold office for such fixed term as

the President may determine at the time of such appointment, but not exceeding seven years: Provided that not less than five members are appointed on a full-time basis: Provided further that the President shall remove any member from office if-

(a) Such removal is requested by a joint committee composed as contemplated in section 115(3)(a) of the Constitution; and

(b) Such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting.

(2) The President may, in consultation with the Commission, appoint a part-time member as a full-time member for the unexpired portion of the part-time member's term of office.

(3) Any person whose term of office as a member of the Commission has expired may be reappointed for one additional term.

(4) A member of the Commission may resign from office by submitting at least three months' written notice thereof to Parliament, unless Parliament by resolution allows a shorter period in a specific case.

Independence and impartiality

4. (1) A member of the Commission or a member of the staff of the Commission shall serve impartially and independently and exercise or perform his or her powers, duties and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution and the law.

(2) No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 5(1) or 16(1) or (6) in the exercise or performance of its, his or her powers, duties and functions.

(3) All organs of state shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.

(4) No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in a fair, unbiased and proper manner.

(5) If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation, while having an interest so contemplated in the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

Committees of Commission

5. (1) The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by it.

(2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.

(3) The Commission shall designate a chairperson for every committee and, if it deems it necessary, a vice-chairperson.

(4) A committee shall, subject to the directions of the Commission, exercise such powers and perform such duties and functions of the Commission as the Commission may confer on or assign to it and follow such procedure during such exercising of powers and performance of duties and functions as the Commission may direct.

(5) On completion of the duties and functions assigned to it in terms of subsection (4), a committee shall submit a report thereon to the Commission.

(6) The Commission may at any time dissolve any committee.

Commission may approach President or Parliament

6. The Commission may, at any time, approach either the President or Parliament with regard to any matter relating to the exercising of its powers or the performance of its duties and functions.

Powers, duties and functions of Commission

7. (1) In addition to any other powers, duties and functions conferred on or assigned to it by section 116 of the Constitution, this Act or any other law, the Commission-

- (a) Shall develop and conduct information programmes to foster public understanding of this Act, Chapter 3 of the Constitution and the role and activities of the Commission;
- (b) Shall maintain close liaison with institutions, bodies or authorities similar to the Commission in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction;
- (c) May consider such recommendations, suggestions and requests concerning fundamental rights as it may receive from any source;
- (d) Shall carry out or cause to be carried out such studies concerning fundamental rights as may be referred to it by the President and the Commission shall include in a report referred to in section 118 of the Constitution a report setting out the results of each study together with such recommendations in relation thereto as it considers appropriate;
- (e) May bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.

(2) All organs of state shall afford the Commission such assistance as may be reasonably required for the effective exercising of its powers and performance of its duties and functions.

Mediation, conciliation or negotiation by Commission

8. The Commission may, by mediation, conciliation or negotiation endeavour-

- (a) To resolve any dispute; or
- (b) To rectify any act or omission, emanating from or constituting a violation of or threat to any fundamental right.

Investigations by Commission

9. (1) Pursuant to the provisions of section 116(3) of the Constitution the Commission may, in order to enable it to exercise its powers and perform its duties and functions-

- (a) Conduct or cause to be conducted any investigation that is necessary for that purpose;
- (b) Through a member of the Commission, or any member of its staff designated in writing by a member of the Commission, require from any person such particulars and information as may be reasonably necessary in connection with any investigation;
- (c) Require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by a member of its staff or a sheriff, in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such

notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced;

(d) Through a member of the Commission, administer an oath to or take an affirmation from any person referred to in paragraph (c), or any person present at the place referred to in paragraph (c), irrespective of whether or, not such person has been required under the said paragraph (c) to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.

(2)(a) Any person questioned under subsection (1) shall, subject to the provisions of paragraph (b) and subsections (3) and (4)-

(i) Be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the Commission notwithstanding that the answer may incriminate him or her;

(ii) Be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.

(b) A person referred to in paragraph (a) shall only be competent and compelled to answer a question or be compelled to produce any article or document contemplated in that paragraph if-

(i) The Commission, after consultation with the attorney-general who has jurisdiction, issues an order to that effect; and

(ii) The Commission is satisfied that to require such information from such person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and

(iii) In the Commission's judgement, such person has refused or is likely to refuse to answer a question or to produce any article or document on the basis of his or her privilege against self-incrimination.

(3) (a) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a questioning in terms of subsection (1) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person stands trial on a charge of perjury or a charge contemplated in section 18(b) of this Act or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(b) Subject to the provisions of subsection (2)(a)(i), the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (1).

(4) Any person appearing before the Commission by virtue of the provisions of subsection (1)(c) and (d) may be assisted at such examination by an advocate or an attorney, or both, and shall be entitled to peruse such of the documents referred to in subsection (1)(c) or minutes as are reasonably necessary to refresh his or her memory.

(5) If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions and such person or his or her legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of this section.

(6) Subject to the provisions of this Act, the procedure to be followed in conducting an investigation shall be determined by the Commission with due regard to the circumstances of each case.

(7) The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure, which it has determined in terms of subsection (6).

(8) The Commission may direct that any person or category of persons or all persons the presence of whom is not desirable shall not be present at the proceedings during the investigation or any part thereof.

Entering and search of premises and attachment and removal of articles

10. (1) Any member of the Commission, or any member of the staff of the Commission or a police officer authorised thereto by a member of the Commission, may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is suspected to be.

(2) The entry and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to-

- (a) A person's right to respect for and protection of his or her dignity;
- (b) The right to freedom and security of the person; and
- (c) The right to his or her personal privacy.

(3) A member or police officer contemplated in subsection (1) may, subject to the provisions of this section-

- (a) Inspect and search the premises referred to in that subsection, and there make such enquiries as he or she may deem necessary;

- (b) Examine any article or document found on or in the premises;
- (c) Request from the owner or person in control of the premises or from any person in whose possession or control that article or document is, information regarding that article or document;
- (d) Make copies of or take extracts from any book or document found on or in the premises;
- (e) Request from any person whom he or she suspects of having the necessary information, an explanation regarding that article or document; attach anything on or in the premises which in his or her opinion has a bearing on the investigation concerned;
- (g) If he or she wishes to retain anything on or in the premises contemplated in paragraph (f) for further examination or for safe custody, against the issue of a receipt, remove it from the premises: Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished.

(4) Any person from whom information is required in terms of subsection (3)(a), (c) and (e) may be assisted at such enquiry by an advocate or an attorney, or both, and shall at the commencement of such enquiry be so informed.

(5)(a) Subject to the provisions of subsection (6), the premises referred to in subsection (1) shall only be entered by virtue of an entry warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation concerned, is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(b) Subject to the provisions of subsection (6), the functions referred to in subsection (3) shall only be performed by virtue of a search warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article or document referred to in paragraph (a) is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(c) A warrant issued in terms of this subsection shall authorise any member of the Commission or any member of the staff of the Commission or a police officer to perform the functions referred to in subsection (3) and shall to that end authorise such person to enter and search any premises identified in the warrant.

(d) A warrant issued in terms of this subsection shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night at times, which are reasonable in the circumstances.

(e) A warrant issued in terms of this subsection may be issued on any day and shall be of force, until-

- (i) It is executed; or
 - (ii) It is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
 - (iii) The expiry of one month from the day of its issue; or
 - (iv) The purpose for the issuing of the warrant has lapsed, whichever may occur first.
- (f) A person executing a warrant under this section shall, at the commencement of such execution, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant: Provided that if such person is not present, he or she shall affix a copy of the warrant to the premises at a prominent and visible place.
- (g) A person executing a warrant under this subsection or an entry or search under subsection (6) shall, at the commencement of such execution, identify himself or herself and if that person requires authorisation to execute a warrant under this section, the particulars of such authorisation shall also be furnished.

(6) Subject to the provisions of subsections (2), (3), (4), (5)(g), (7) and (8), any member of the Commission, or any member of the staff of the Commission or a police officer upon request by a member of the Commission, may, without an entry and search warrant, enter and search any premises, other than a private dwelling, for the purposes of attaching and removing, if necessary, any article or document-

(a) If the person or persons who may consent to the entering and search for and attachment and removal of an article or document consents or consent to such entering, search, attachment and removal of the article or document concerned; or

(b) If he or she, on reasonable grounds, believes-

(i) That a warrant will be issued to him or her under subsection (5) if he or she applies for such warrant; and

(ii) That the delay in obtaining such a warrant would defeat the object of the entry and search.

(7) An entry and search in terms of subsection (6) shall be executed by day unless the execution thereof by night is justifiable and necessary.

(8)(a) A person who may lawfully under this section enter and search any premises may use such force as may be reasonably necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any article or document which is the subject of the

search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

(9) If during the execution of a warrant in terms of section 10(5)(b) or a search in terms of section 10(6), a person claims that an article or document found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search shall, if he or she is of the opinion that the article or document contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

Vacancies in Commission

11 (1) A vacancy in the Commission shall occur-

- (a) When a member's term of office expires;
- (b) When a member dies;
- (c) When a member is removed from office in terms of the second proviso to section 3(1); or
- (d) When a member's resignation, submitted in accordance with section 3(4), takes effect.

(2) A vacancy in the Commission shall-

- (a) Not affect the validity of the proceedings or decisions of the Commission; and (b) be filled as soon as practicable in accordance with section 115(3) of the Constitution.

Meetings of Commission

12. (1) The meetings of the Commission shall be held at the times and places determined by the Commission: Provided that the first meeting shall be held at the time and place determined by the Minister of Justice.

(2) If the Chairperson is absent from a meeting of the Commission, the Deputy Chairperson referred to in section 115(5) of the Constitution shall act as chairperson, and if both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the members present shall elect one from among their number to preside at that meeting.

(3) The quorum for any meeting of the Commission shall be a majority of the total number of members.

(4) The decision of the majority of the members of the Commission present at a meeting thereof shall be the decision of the Commission, and in the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote.

(5) The Commission shall determine its own procedure and shall cause minutes to be kept of the proceedings.

(6) The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure, which it has determined in terms of subsection (5).

Remuneration and allowances of members of Commission

13. (1) The remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission shall be determined by the President in consultation with the Cabinet and the Minister of Finance.

(2) The remuneration of the members of the Commission shall not be reduced during their continuation in office.

(3) A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, performs additional duties and functions, be paid such additional remuneration as may be determined by the President in consultation with the Cabinet and the Minister of Finance.

Compensation for certain expenses and damage

14 (1) Subject to the provisions of subsection (2), the Commission may, with the specific or general concurrence of the Minister of Finance, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an investigation by the Commission, be paid from State funds.

(2) Any person appearing before the Commission in terms of section 9(1)(c) who is not in the public service, shall be entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have

received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.

(3) If a person has suffered damage in the course of the execution of an entry or search warrant in terms of section 10(5) (a) or (b) or an entry or search contemplated in section 10(6), under circumstances where no person responsible for the premises was present at the time of the causing of the damage and the damage was caused by force used to gain entry as contemplated in section 10(8)(a), the Commission may order that such damage be made good from State funds.

Reports by Commission

15. (1) The Commission may, subject to the provisions of subsection (3), in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it.

(2) In addition to the report contemplated in section 118 of the Constitution, the Commission shall submit to the President and Parliament quarterly reports on the findings in respect of functions and investigations of a serious nature which were performed or conducted by it during that quarter: Provided that the Commission may, at any time, submit a report to the President and Parliament if it deems it necessary.

(3) The findings of an investigation by the Commission shall, when it deems it fit but as soon as possible, be made available to the complainant and any person implicated thereby.

Staff, finances and accountability

16 (1) The Commission shall at its first meeting or as soon as practicable thereafter appoint a director as chief executive officer of the Commission in accordance with section 117(1) of the Constitution, who-

(a) Shall, in consultation with the Public Service Commission and the Minister of Finance and subject to subsection (5), appoint such staff in accordance with section 117(1) of the Constitution as may be reasonably necessary to assist him or her with the work incidental to the performance by the Commission of its functions;

(b) Shall be responsible for the management of and administrative control over the staff appointed in terms of paragraph (a), and shall for those purposes be accountable to the Commission;

(c) Shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)-

(i) Be charged with the responsibility of accounting for State money received or paid out for or on account of the Commission;

(ii) Cause the necessary accounting and other related records to be kept;

(d) May exercise the powers and shall perform the duties and functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of the Commission, and shall for those purposes be accountable to the Commission.

(2) The records referred to in subsection (1)(c)(ii) shall be audited by the Auditor-General.

(3) The defrayal of expenditure in connection with matters provided for in this Act or in sections 115 up to and including 118 of the Constitution shall be subject to-

(a) Requests being received mutatis mutandis in the form as prescribed for the budgetary processes of departments of State; and

(b) The provisions of the Exchequer Act, 1975, and the regulations and instructions issued in terms thereof, as well as the Auditor-General Act, 1989 (Act No. 52 of 1989).

(4) The chief executive officer of the Commission shall be appointed on such terms and conditions and shall receive such remuneration, allowances and other service benefits as the Commission may determine in accordance with the regulations under section 19.

(5) The other staff of the Commission shall be appointed on such terms and conditions and shall receive such remuneration, allowances and other service benefits as the chief executive officer may determine in accordance with the regulations under section 19.

(6) The Commission may, in consultation with the Public Service Commission, in the exercise of its powers or the performance of its duties and functions by or under this Act, the Constitution or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and with the concurrence of the Minister of Finance, determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

Legal proceedings against Commission

17. (1) The Commission shall be a juristic person.

(2) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply mutatis mutandis in respect of the Commission, and in such application a reference in that Act to "the Minister of the department concerned" shall be construed as a reference to the Chairperson.

(3) No-

(a) Member of the Commission;

(b) Member of the staff of the Commission;

(c) Person contemplated in section 16(6); or

(d) Member of any committee, not being a member of the Commission, shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act or the Constitution.

Offences and penalties

18. A person who-

(a) Without just cause refuses or fails to comply with a notice under section 9(1)(c) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 9(1)(d) or refuses to answer any question put to him or her under section 9(1)(d) or refuses or fails to furnish particulars or information required from him or her under that section;

(b) After having been sworn or having made an affirmation contemplated in section 9(1)(d), gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;

(c) Wilfully interrupts the proceedings at an investigation or misbehaves himself or herself in any manner in the place where such investigation is being held;

(d) Defames the Commission or a member of the Commission in his or her official capacity;

(e) In connection with any investigation does anything, which, if such investigation were proceedings in a court of law, would have constituted contempt of court; anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;

(g) Does anything calculated improperly to influence the Commission in respect of any matter being or to be considered by the Commission in connection with an investigation;

(h) Contravenes any provision of section 4(2);

(i) Fails to afford the Commission the necessary assistance referred to in section 4(3) or 7(2);

(j) Acts contrary to the authority of an entry warrant issued under section 10(5)(a) or a search warrant issued under section 10(5)(b) or, without being authorised thereto under section 10, enters or searches any premises or attaches any article or document or

performs any act contemplated in section 10(3), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Regulations

19 (1) The President may, after the Commission has made a recommendation and after consultation with the Public Service Commission, make regulations regarding the following matters in relation to the staff of the Commission:

(a)

(i) The different categories of salaries and scales of salaries, which shall be applicable to the different categories of members of staff;

(ii) The requirements for appointment and the appointment, promotion, discharge and disciplinary steps;

(iii) The recognition of appropriate qualifications and experience for the purposes of the determination of salaries;

(iv) The procedure and manner of and criteria for evaluation, and the conditions or requirements for the purposes of promotion;

(b) The powers, duties, conduct, discipline, hours of attendance and leave of absence, including leave gratuity, and any other condition of service;

(c) The creation of posts on the establishment of the Commission;

(d) The training of staff, including financial assistance for such training;

(e) A code of conduct to be complied with by staff;

(f) The provision of official transport;

(g) The conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid;

(h) Subject to section 17, the legal liability of any member of staff in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport;

(i) The circumstances under which and the conditions and manner in which a member of staff may be found to be guilty of misconduct, or to be suffering from continued ill-health, or of incapacity to carry out his or her duties of office efficiently;

(j) The procedure for dealing with complaints and grievances of members of staff and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such members of staff shall be submitted;

(k) The membership or conditions of membership of a particular pension fund and the contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a pension fund;

(l) The membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of members of staff or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such members of staff and paid to such medical aid scheme or medical aid society;

(m) The contributions to and the rights, privileges and obligations of members of staff or their dependants with regard to such a medical aid scheme or medical aid society;

(n) In general, any matter which is not in conflict with this Act or the Constitution and which is reasonably necessary for the regulation of the terms and conditions of service of members of staff.

(2) Any regulation under this section relating to State expenditure, shall be made in consultation with the Minister of Finance.

Short title and commencement

20 This Act shall be called the Human Rights Commission Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

ANNEXURE E

Some of the information used in this dissertation with respect to the National Commission on Human Rights and Freedoms of Cameroon are based on the following questionnaire.

Questionnaire on the National Commission on Human Rights and Freedoms

1. Comment on the procedure of appointment of commissioners.
2. Comment on the term of office of commissioners. Is the five-year gazetted term respected? If not, why?
3. What can you say about the independence of the Commission or any other matter relating thereto?
4. Comment on representation in the Commission.
5. How accessible is the Commission to people? Are offices available in other provinces? If not, why? How many offices does the Commission have and where are they situated?
6. What are the annual budgets for the Commission in the last five years? Do you think the Commission can carry out its mandate on the existing budget?
7. Comment on the Commission's position with respect to socio-economic rights. Are these rights protected? What is the Commission doing to ensure the full enjoyment of these rights?
8. What is the relationship of the Commission with NGOs? To what extent does the Commission collaborate with NGOs in order to protect human rights?
9. Has the Commission been admitted into the Federation of Commissions in charge of the Protection and Promotion of Human Rights? If not, why?