



SOUTH AFRICAN HUMAN RIGHTS COMMISSION'S RESPONSES TO QUESTIONNAIRE ON NATIONAL HUMAN RIGHTS INSTITUTIONS AND HUMAN RIGHTS DEFENDERS

SPECIAL RAPPORTEUR ON THE SITUATION OF HUMAN RIGHTS DEFENDERS, MARGARET SEKAGGYA

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1 a) Please provide a brief overview of the legislative framework adopted to establish a national human rights institution (hereafter 'the Institution') in your country. Please cite the names of any such laws or regulations in full.

The South African Human Rights Commission (SAHRC or Commission) is an independent national human rights institution that was created in 1996. The constitutional and legislative framework for the SAHRC is provided for in section 184 of the Constitution (Constitution of the Republic of South Africa, Act 108/1996); the Human Rights Commission Act (Act 54/1994); and, the various provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act (Act 4/2000, also referred to as PEPUA or the Equality Act) and the Promotion of Access to Information Act (Act 2/2000, also referred to as PAIA) provide.

In terms of its mandate, the Commission is empowered and obligated to address all human rights. This is interpreted broadly as the term 'human rights' is not defined in any of the Commission's founding laws. There are no statutory limitations placed on the Commission's mandate other than the territorial jurisdiction of the borders of South Africa. This does not prevent the Commission from intervening at a domestic level with the relevant authorities on behalf of South African citizens abroad whose human rights have allegedly been infringed. The Commission can intervene by requesting the intervention by the South African authorities or monitoring the said interventions. The Commission also considers itself to have jurisdiction on matters relating to how the South African government conducts itself within the international arena; for example: within the context of human rights issues and decisions made at the Human Rights Council.

The Commission has the powers, as regulated by national legislation, necessary to perform its functions, including the power to do the following:

- Investigate and report on the observance of human rights through its Research Programme and Communications Unit;
- Take steps to secure appropriate redress, where human rights have been violated, through its Legal Services Programme;

- Carry out research through the Research Programme; and
- Provide human rights education and awareness-raising through its Advocacy Programme.

The Commission has additional powers and functions prescribed by specific legislative obligations in terms of PAIA and PEPUDA. In terms thereof, the Commission is required to do the following:

- Promote awareness of these laws;
- Report to Parliament in relation to these laws; and
- Develop recommendations to address challenges related to these laws and any necessary reforms to address these challenges.

1 b) Please indicate how these laws and regulations comply with international human rights standards and in particular, the Paris Principles.

The Commissions' functions include the promotion and protection of human rights. The Commission has a broad mandate which is not limited as the Commission must address all human rights.

The Commission has the mandate to prepare submissions on any legislation and policies to ensure that they conform to fundamental human rights principles. The Commission for instance has made submissions on a number of legislations including those relating to torture, traditional courts, protection of information, and older persons to name but a few. These submissions have made a significant impact on the rewriting of bills to ensure that the legislation, when adopted, complies with international human rights norms and standards.

The Commission has also conducted a number of public inquiries into various human rights issues associated with xenophobia; education; school based violence; health; housing; human rights in farming communities and racism in the media amongst others. These public inquiry reports are tabled in parliament and shared with government departments. The recommendations and the implementation thereof, is monitored by the Commission.

In terms of section 184(3) of the Constitution, the Commission is required to request information from government on the progressive realisation of certain economic and social rights. The Commission places this information in its section 184 (3) Economic and Social Rights Report. Recently the Commission released an Equality Report containing commentaries on racism, disability and LGBTI rights.

The Commission is actively engaged in ensuring that Government harmonizes national legislation, regulations and policies with international human rights norms and standards. For example, the Commission has engaged in numerous activities to promote the drafting and enactment of legislation

criminalising torture in compliance with its international obligations in terms of the Convention against Torture (CAT); the recommendations that have been made by that Committee and also by the Human Rights Council through the Universal Periodic Review process. In September 2012, the Commission participated in parliaments' public hearings on a Combating of Torture Bill and it is anticipated that this legislation will be passed shortly.

In the area of economic and social rights, the Commission has recently developed a Basic Education Charter in consultation with a broad range of stakeholders including civil society, academia and government. The Charter seeks to provide guidance on the content of the right to basic education and sets out what can be expected from government in order to give effect to the full realisation of this right.

1 c) Please indicate the current accreditation status of the institution with the International Coordinating Committee (ICC) and what measure, if any, have been taken to implement the recommendations highlighted at the most recent ICC Sub-Committee on Accreditation meeting with a view to strengthening NHRI's compliance with the Paris Principles.¹

The South African Human Rights Commission is currently accredited with an "A" Status. The Commission is due for its 5-yearly reaccreditation in November 2012.

The First Observation which deals with annual, special or thematic report recognises that the work of a national institution in promoting and protecting human rights does not stop at the completion of a report but requires it to continuously monitor the consideration of the NHRIs reports and recommendations and to undertake necessary follow up action with governments and relevant parties.

The Commission produces both annual and thematic reports. The Constitution provides for the Commission to inter alia, report on human rights and to compile a report on the state of achievement or lack thereof of socio-economic rights every year. In terms of the Public Finance Management Act, the Auditor General audits the SAHRC on an annual basis. This information forms part of the Annual Report.

There are no formal provisions in the Constitution or the Human Rights Commission Act requiring individuals, government or public bodies to formally respond to recommendations and reports. The Commission has raised this issue with the Department of Justice & Constitutional Development in its submissions on the amendments to the HRC Act. The Commission has requested that a provision be inserted in the Act whereby government departments are obliged to respond to the Commission's recommendations within a given time.

In addition, the Commission meets with the relevant Portfolio Committee in Parliament at least once a year, providing a report on its activities and plans for the oncoming year. It is during these interactions

¹ At the 22nd meeting of the International Coordinating Committee of NHRIs (ICC), held in Geneva from 23-27 March 2012, the organisation's Sub-Committee on Accreditation presented three new General Observations developed at its November 2008 session

that the Commission shares recommendations contained in its reports, outlining some of the successes and challenges.

In early 2012, the Commission engaged with the Department of Performance Monitoring and Evaluation (DPME) to discuss the non-responsiveness of some government departments towards the Commissions' recommendations and requests for information. The result of the meeting was that Government agreed to encourage departments to respond to SAHRC requests for information and to improve compliance with its recommendations.

There are instances where government departments have shown commendable cooperation with the Commission. For example, the South African Police Services and Emergency Management Services responded to the recommendations of the SAHRC regarding the protection of non-nationals against violence and lawlessness. These recommendations are contained in the 'Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals' (published in March 2010). In essence then, levels of compliance with the Commission's recommendations vary from department to department, and from issue to issue, with processes unfolding to deal with non-compliance.

Following South Africa's initial review under the Universal Periodic Review process in 2008, the Commission mainstreamed the UPR recommendations into its daily work.

The Second Observation, dealing with 'administrative regulation' recognises that national institutions need to be subjected to a level of regulation in order to ensure operational efficiency and financial accountability but notes that such regulation should not exceed the regulation imposed on other government agencies, nor should it impact adversely on the independence of the national institution.

The Commission is financially independent from government in how it spends its money but the Executive Authority and the Accounting Officer (the Chief Executive Officer) are required by the Public Finance Management Act to report to National Treasury and Parliament on how the budget has been spent. The requirements of the Public Finance Management Act (PFMA) in terms of reporting are set out below:

"Accounting Officer's reporting responsibilities

40. (1) The accounting officer for a department, trading entity or constitutional institution—

must keep full and proper records of the financial affairs of the department, trading entity or constitutional institution in accordance with any prescribed norms and standards;

must prepare financial statements for each financial year in accordance with generally recognized accounting practice;

must submit those financial statements within two months after the end of the financial year to

(i) the Auditor-General for auditing; and

(ii) the treasury to enable that Treasury to prepare consolidated financial statements in terms of section 8;

must submit within five months of the end of a financial year to the treasury and, in the case of a department or trading entity, also to the executive authority responsible for that department or trading entity—

(i) annual report on the activities of that department, trading entity or constitutional institution during that financial year;”

These reports and the annual financial statements produced by the Commission are audited by the Auditor-General for governance and accountability purposes and do not in any way impact on the independence of the Commission. The Commission is required to implement recommendations that stem from such audits. In accordance with the PFMA, the Commission submits quarterly financial reports to Treasury.

The third Observation which deals specifically with ‘Annual Reports’ highlights the importance of the timely publication of such reports in documenting the observance of human rights in the country and recording the national institution’s activities in this regard. It notes further the difficulty in assessing a national institution in the absence of recent annual reports.

The Commission produces an annual report of its activities and expenditures every year. This report is prepared based on the provisions of Section 181 (5) of the Constitution which states that:

“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.”

and

Section 40 (1) e of the Public Finance Management Act which states that:

“40. (1) the accounting officer for a department, trading entity or constitutional institution—

(e) must, in the case of a constitutional institution, submit to Parliament that institution’s annual report and financial statements referred to in paragraph 5(d), and the Auditor-General’s report on those statements, within one month after the accounting officer received the Auditor-General’s audit report;”

This report must be tabled within 6 months of the end of the financial year in Parliament and the Commission is called to Parliament within a few weeks thereafter to present on the report. The Commission has thus far produced 16 Annual reports since its inception in 1995. The latest report was presented to Parliament on 10 October 2012.

2 a) Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.

The Commission has several responsibilities that can be broadly clustered into these functions: advisory, monitoring and investigative.

- *Advisory Function*

The Commission's advisory function is exercised through its powers to advise Government and parliament on matters relating to the promotion and protection of human rights. In terms of the Commission's broad constitutional mandate it can draft reports on the national situation concerning human rights. Section 184(3) of the constitution specifically provides for the monitoring of economic and social rights and the Commission produces annual reports in terms thereof. The Commission also produces an annual international report. This report sets out the international treaty bodies monitored by the Commission and provides information on the South African situation and developments in relation to a particular treaty body on an annual basis. The Commission has also begun to produce an annual Equality Report.

These reports and activities are conducted primarily through the Commission's Research Programme. The parliamentary and international affairs (PIA) section of the Research Programme carries out the advisory and monitoring function with respect to national legislation and international treaties. PIA monitors the various calls for submissions on legislation that are made by government departments and Parliament. Commissioners are advised thereof and where determined, the necessary research is carried out, consultations with various stakeholders occur and a submission is drafted, commented on by Secretariat and Commissioners prior to Commissioners giving the final sign off. During the drafting and research process, the submission will make reference to international and regional human rights instruments, comparative legal research and recommendations made to South Africa by treaty bodies and the UPR process. The Commission has also created a Monitoring and Evaluation system in order to determine if its submissions make any impact.

The Commission also plays a strategic role in terms of monitoring international treaty obligations. Due to advocacy in conjunction with civil society, the South African Government has introduced a Combating of Torture which aims to criminalise torture. The Commission also contributes to the State's reports to treaty bodies in its independent capacity and has also submitted NHRI reports to treaty bodies

highlighting where the Commission differs with government on issues, drawing attention to the most critical human rights issues confronting the country and suggesting possible recommendations.

The Commission has also participated in its independent capacity in civil society ratification campaigns. In addition, the Commission ensures that the ratification of these treaties is highlighted in all strategic documents and annual reports of the Commission. The Commission has actively participated in the UPR processes by submitting its own NHRI reports, making oral statements and actively following up on the implementation of the recommendations emanating from this process.

- *Monitoring Function*

Section 184(3) of the Constitution obliges the Commission to request information from relevant state organs. The SAHRC compiles a report on the state of achievement (or lack thereof) of socio-economic rights which is presented to Parliament. The Commission also shares recommendations contained in its other reports, to the relevant Portfolio Committees in Parliament.

As part of preparation for writing the Equality Report, the Commission visited a sample of Equality Courts in all the provinces, and the findings are included in the Equality Report to be published in 2012. The Commission also includes information on its monitoring of detention facilities in its annual report, focusing particularly on its monitoring of Lindela Repatriation Centre, given the vulnerability of non-nationals.

The Commission chairs the Equality Review Committee (in terms of PEPUDA), makes submissions on legislation and has recently participated in its independent capacity in a government Task Team that is monitoring and addressing the situation of homophobic violence towards lesbian women in South Africa.

While the Commission regularly present its recommendations and concerns to the relevant government departments, compliance with such is not always the case. To address this, the Commission has held meetings with the Department of Performance Monitoring and Evaluation to discuss the non-responsiveness of some of the government departments towards the recommendations the Commission has made. The Department will assist the Commission in ensuring that government departments respond to its requests for information, reports and recommendations.

There are instances where government departments have shown commendable cooperation with the Commission. For example, the South African Police Services and Emergency Management Services responded to the recommendations of the Commission regarding the protection of non-nationals against violence and lawlessness. These recommendations are contained in the *Report on the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals* (published in March 2010).

▪ *Investigative Function*

The Constitution provides broadly for the Commission's protection mandate and powers to investigate and take steps to provide redress for human rights violations, thereby providing the constitutional basis for its complaints handling function (sections 184(1)(b) and 184(2)(a) and (b)). Sections 7 – 10 of the Human Rights Commission Act provide more detailed provisions. These are as follows:

"7. Powers, duties and functions of Commission.—(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 cooperation 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.

8. Mediation, conciliation or negotiation by Commission.—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.

9. Investigations by Commission.—(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 ©, or any person present at the place referred to in paragraph ©, irrespective of whether or not such person has been required under the said paragraph © 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 judgment, 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 anybody 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) © 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) © 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.
(Date of commencement of s. 9: 17 May, 1996.)
10. Entering and search of premises and attachment and removal of articles.—(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;
 - (f) 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 achieved.”

All complaints are handled through the complaints handling procedure. All complaints received are investigated and afterwards the Legal Officer makes a determination. The matter is then forwarded to the Legal Complaints Handling Committee, which has representation from Commissioners and Senior Managers. It is within this forum that final decisions are taken as to whether there has been a human rights violation. It is also this Committee that determines whether there is a need to commence litigation.

The Equality Act (PEPUDA) also enables the Commission to institute proceedings in the Equality Court, and to serve as an alternative forum for the resolution of matters, as may be directed by the court.

2(b) Please indicate whether the Institution is mandated to consider and /or adjudicate individual complaints of human rights violations

In terms of the Commissions’ constitutionally derived protection mandate read in conjunction with the Human Rights Commission Act, it may receive individual complaints relating to human rights violations. The Commission considers these complaints and where appropriate makes findings and recommendations. The Commission also has the statutory authority to resolve matters through conciliation and mediation.

2(c) If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/ or the military are limited.

The Commission’s mandate is not limited. It has the authority to investigate all complaints brought to it that relate to human rights violations. However, within the South African context, there are other independent bodies that address specific human rights violations. In the case of the police, the Independent Police Investigative Directorate (IPID) investigates complaints against the police relating to deaths in police custody, police misconduct and recently the mandate has been extended to investigate acts of torture. In the case of prisons, the Judicial Inspectorate for Correctional Services (JICS) handles complaints relating to treatment of inmates in correctional centres and conditions in correctional centres. Thus, the Commission refers complaints to the IPID when the complaints fall within the legislative mandate of the IPID and those falling within the legislative mandate of the JICS to the JICS. This is in accordance with section 7 (e) of the Human Rights Commission Act (quoted above).

Complaints of human rights abuses committed by the police that do not fall within the jurisdiction of the IPID and military complaints can be considered and dealt with by the Commission.

2(d) In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities

Through the Commissions complaints system it may make findings and recommendations. It is in this manner that remedies are provided to victims of human rights violations. Each complaint is considered in terms of its merits and in making recommendations the Commission takes into account the views of the complainant. The recommendations of the Commission are accepted by the party concerned and implemented in the vast majority of matters. In those rare instances, where recommendations are not implemented or acted upon, the Commission can consider referring the matter to be adjudicated by the courts.

The Commission does not have the legislative mandate nor the resources to provide witness protection. To date, no complainant has ever requested witness protection from the Commission.

The Commissions complaints handling processes allow for the anonymity of a complainant should this be necessary in order to protect the person. This provision is rarely required to be used in South Africa.

The Commission interpret its monitoring mandate broadly to include the constitutionally derived power to conduct visits to places of detention. The Commission has received the cooperation from the relevant authorities in carrying out these visits. The Commission has from time to time conducted oversight visits of police cells; prisons; psychiatric hospitals and private informal drug rehabilitation centres. The Commission is most active in conducting oversight visits to places where non nationals are detained such as the Lindela Repatriation Centre.

3. Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases)

In South Africa, the Commission is in the fortunate situation in that it has not had to deal with specific instances of human rights defenders at risk requiring its' assistance. While the Commission does not have specific mechanisms for ensuring that human rights defenders at risk are protected, this would not

prevent the Commission from taking action should the situation arise that human rights defenders are placed at risk.

Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the Institution addresses them.

4 (a) Please describe the working relationship between the Institution and civil society, including human rights defenders, in accordance with the Paris Principles.

All the Commission's programmes interact with the civil society and the Commission enjoys good working relationships with a variety of NGOs, trade unions, religious organisations and academic institutions. The Commission has a number of working groups (referred to as Section 5 Committees due to being constituted in terms of section 5 of the Human Rights Commission Act). Currently these working groups address the following issues – persons with disabilities, migrants and xenophobia, housing, right to food, health, torture and children's rights.

4 (b) Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and/or human rights defenders and how the institution seeks to address them.

The only limitation on the extent of interaction with civil society and human rights defenders are the resources of the Commission. This becomes particularly acute, when Commissioners and Secretariat staff need to travel long distances in order to interact with civil society.

5(a) Please indicate whether any member of the Institution's staff has ever been the victim of threats or other kind of harassment, as a result of work carried out on behalf of the organization

The Commission cannot recall an incident in which a Commissioner or member of staff has been the victim of threats or other kind of harassment from government officials whilst carrying out work on behalf of the organisation.

The Commission has experienced a number of unfortunate incidents occasioned by members of the public who have approached the Commission for assistance and have used threats to demand that the Commission address the matter in a particular manner. The most extreme example dates back to 2007 when an elderly complainant produced a gun and took staff hostage whilst demanding that the pensionable age for older persons should be the same for men and women. The South African Police Services responded and with the assistance of police hostage negotiators the situation was resolved and the hostage taker arrested.

The Commission has also had a number of instances where persons with psycho social disabilities or persons who are particularly distressed have attended at its offices and conducted themselves in a manner towards staff that has caused distress and fear e.g. threatening to commit suicide, attempting suicide inside Commission offices, self harming inside commission offices in front of staff members, speaking loudly and aggressively, threatening to blow themselves up inside Commission offices, etc. The Commission staff find these situations challenging to handle as staff are not specifically trained to deal with such situations. Also, many persons with psycho social disabilities and/or in distressed states are excluded in society and discriminated against, resulting in them turning to the Commission as a place of last resort. They thus arrive at the Commission offices already frustrated and distressed..

5(b) Please specify what mechanisms, if any, are in place to protect Institution members investigating human rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect Institution members.

In recent years the Commission has given increased attention and invested resources in security systems within Commission offices. The Commission has employed a full time Safety Officer who conducts regular safety audits. The Commission has employed the services of private security companies and may also call upon the police should and when the need arises.

The Commission has at times where necessary consulted with the police and requested their assistance in visiting places where this was necessary.

In addition, Human Rights Commission Act provides immunity from legal proceedings for commissioners and staff for acts carried out in good faith.

- “17. Legal proceedings against Commission.—(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.”

5(c) Please indicate whether the Institution has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subject to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles

The Commission has never experienced an unannounced visit by representatives of police or state authorities.

The Commission cannot recall ever being subject to interference or threat that may jeopardize its independence.

6(a) Please indicate the main sources of funding for the Institution

The Commission receives its funding primarily from the South African Government. The current annual budget of the Commission is approximately 100 million South African rands (11 500 000USD). Funding from donors is occasionally sought in support of particular projects.

6(b) In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organisation and how this impacts on the work of the Institution

The Commission regularly requests increases in its budget. The Commission has a broad mandate and there is much work that needs to be done in South African to create a culture of human rights and to ensure that human rights are promoted, respected and protected. South Africa has limited resources and thus requests for additional funds are considered within this context. Clearly, the Commission would be able to conduct more work and give effect more quickly to its mandate the greater the budget.

7 (a) Please describe the procedures in place relating to the selection and appointment of members of the governing body.

The Commissioners are the executive authority of the Commission. Their appointment and tenure is determined by the Constitution and the Human Rights Commission Act. Section 193 of the Constitution provides that:

“193(1) The Public Protector and the members of any Commission established by this Chapter must be women or men who-

- (a) are South African citizens;
- (b) are fit and proper persons to hold the particular office; and
- (c) comply with any other requirements prescribed by national legislation.
- (d) The need for a Commission established by this Chapter to reflect broadly the race and gender composition of South Africa must be considered when members are appointed.”

.....

(4) The President, on the recommendation of the National Assembly, must appoint the Public Protector, the Auditor-General and the members of-

- (a) the South African Human Rights Commission”

The Human Rights Commission Act also has provisions relating to the appointment of Commissioners (e.g. section 3 Terms of office of Commissioners and section 11 – Vacancies in the Commission). This Act prescribes the procedure for the appointment of Commissioners.

A multi-party *ad hoc* parliamentary committee is established to interview prospective Commissioners. This committee is known as the Ad Hoc Committee for the Appointment of Commissioners to the Commission of Human Rights (The Ad Hoc Committee). The Ad Hoc Committee selects candidates to be interviewed, following nation-wide announcements of the vacancies. The interviews take place in public. This Committee then recommends prospective Commissioners to the Parliament. Parliament then votes on the matter and provides a final list of candidates to the President for approval, who then appoints the Commissioners. Transparency and diversity are taken into account in the selection and civil society organisations are allowed to attend the interviews of the candidates.

7 (b) Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.

In the Commission's view the selection and appointment process in South Africa is transparent. By advertising vacancies in the Commission through the media there is broad consultation for persons to be nominated as Commissioners. The previous appointment process bears out that nominations were received from a broad and representative grouping of South African citizens. A public interview process is held in Parliament. Commissioners serve in their individual capacities and do not represent organisations once they become Commissioners.

The South African Constitution includes provisions instructing Commissioners to act independently, secures their tenure, and prohibits their arbitrary removal from office. Section 3 of the Human Rights Commission Act provides specific protection against the arbitrary removal from office and states as follows:

“ 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”