

**A Submission to the Parliamentary Ad Hoc Committee on Review of
State Institutions Supporting Constitutional Democracy**

**The South African Human Rights Commission and its monitoring of
socio-economic rights through compiling periodic reports**

by

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I INTRODUCTION

1. The Community Law Centre (Centre) at the University of the Western Cape is a research and educational institute working towards realising the democratic values and human rights enshrined in South Africa's Constitution. The Centre focuses on the needs and status of particularly vulnerable groups such as children, women, and people who are poor and living in poverty.
2. The Socio-Economic Rights Project (Project) of the Centre was established in 1997 with the aim to contribute towards the protection and promotion of socio-economic rights. The Project uses socio-economic rights framework as a tool to improving the living conditions of people living in poverty generally.
3. The Centre, including the Project, has had a good working relationship with the South African Human Rights Commission (Commission). The Project has particularly worked with the Commission in establishing a monitoring regime for socio-economic rights in South Africa. The Project has also contributed substantially towards a better understanding of the Commission's monitoring mandate in terms of section 184(3).
4. We commend the parliamentary initiative to review how this and other Chapter 9 institutions have operated and executed their constitutional mandate.
5. We wish to participate in this assessment process by sharing our perspectives and views on how the Commission has executed its constitutional mandate in line with section 184(3) of the Constitution.

II SECTION 184(3) OF THE CONSTITUTION AND THE ORIGINS OF THE MONITORING REGIME

6. One of the key features of South Africa's 1996 Constitution (Constitution) is its inclusion of socio-economic rights in the Bill of Rights and the institutional mechanism for monitoring their implementation. The 1993 (Interim) Constitution established the Human Rights Commission to support constitutional democracy (ss 115 – 118)¹. The 1996 Constitution confirms the establishment of the Commission to monitor progress in the implementation of socio-economic rights.²

¹ The Human Rights Commission Act 54 of 1994 elaborates on the functions and responsibilities of the SAHRC.

² While the Constitution gives a direct obligation on the SAHRC to monitor the implementation of socio-economic rights, it also provides the same but less direct responsibility on other institutions. For example, it can be argued that the Commission on Gender Equality (CGE) has an implicit obligation to monitor socio-economic rights. Advancing substantive equality, which is the CGE's main objective, cannot be achieved without adopting positive measures to promote access to socio-economic rights and freedoms, especially for the disadvantaged and vulnerable groups. Therefore, the CGE would naturally be expected to monitor progress in ensuring that no one faces discrimination in terms of access to socio-economic rights.

7. Section 184(3) of the Constitution obliges the Commission to collect information from relevant organs of the state on the measures they adopted to realise socio-economic rights concerning housing, health care, food, water, social security, education and the environment.
8. However, this provision has three technical ambiguities. The first is that section 184(3) does not oblige the organs of state to report to the Commission. The organs of state only have an obligation to provide information to the Commission upon requests by the latter. If the Commission does not request information, the organs of state do not have a duty to voluntarily provide information or report to the Commission on the measures they have taken to towards realising socio-economic rights.³
9. Understanding that the provision of information depends solely on its compliance with its constitutional obligation to collect information from the organs of state, the Commission has been commendably diligent and consistent in requesting data from the various government departments on measures they have taken to advance socio-economic rights.
10. The second technical ambiguity is that the Commission is not constitutionally required to compile reports once the information is provided. However, fortunately the Commission understood that the collection of information would be fruitless if not analysed and documented, and trends and patterns in the implementation of socio-economic rights would not be determined by simply collecting information. Again, it has commendably compiled a series of reports on the basis of information collected in this regard.
11. The third ambiguity relates to the omission of land rights from the list of socio-economic rights to be monitored. It is not clear why these rights were excluded from the list. However, one explanation could be that the land rights are rather softly protected compared to the other socio-economic rights. The Constitution protects the right to property which includes an obligation on the state to take reasonable steps to ensure equitable access to land to everyone (s25(5)).
12. The other explanation could be because of the controversy that the property clause brought about during the drafting of the Constitution. There were concerns that the Commission would be strong enough to compel government to move speedily with the land reform including land redistribution – which in turn could threaten their property privileges – if land rights were included in the list of socio-economic rights to be monitored. Therefore, the exclusion could have been a deliberate political compromise to assuage the fears of certain groups of people owning property including land in South Africa (who are predominantly white).
13. However, the Commission courageously read the section 184(3) purposively and expansively to include monitoring the measures taken to realise land

³ For further discussion on this, see Sandra Liebenberg, 2001. 'Violations of Socio-Economic Rights: The role of the South African Human Rights Commission' in Penelope Andrews and Stephen Ellman (eds) *The Post-Apartheid Constitutions: Perspectives on South Africa's Basic Law*, 405.

rights. It rightfully understood that the principal purpose of section 184(3) is to monitor and report on the positive steps taken by the state to realise positive obligations relating to socio-economic rights.

14. The Commission must have also included the right to land in its monitoring because of the interdependent nature of human rights in general and socio-economic rights in particular. Land rights are closely linked to such socio-economic rights as the right to sufficient food and adequate housing. Reporting on measures taken in respect of land rights complements reports on steps adopted to progressively realise other related rights. The Commission should be commended for disregarding this overt omission, and for requesting information on the measures the department of land affairs has adopted to realise the right to land.

III DEVELOPING THE MONITORING REGIME: A COLLECTIVE EFFORT

15. The newness of the Commission came with enormous challenges on how to practically discharge and operationalise its constitutional and legislative mandate, including that of monitoring the implementation of socio-economic rights. There was no comparative national model for monitoring these rights, but only models of international monitoring bodies such as the United Nations Committee on Economic, Social and Cultural Rights.
16. In addition, there was lack of existing information, experience and jurisprudence regarding the implementation of socio-economic rights. The challenge was therefore to develop the monitoring regimes for these rights from scratch.
17. The Commission undertook several initiatives to develop a national reporting model for monitoring socio-economic rights. The first was the development of a set of guiding principles and a comprehensive programme of action for the implementation of the Commission's mandate in terms of section 184(3). To do this, the Commission collaborated with the Socio-Economic Rights Project of the Community Law Centre (University of the Western Cape) and the Centre for Human Rights (University of Pretoria) by co-hosting a workshop which resulted in the development of the plan of action for monitoring socio-economic rights.⁴
18. The second step was to develop sources of information on the extent to which socio-economic rights are being implemented. In this regard, the Commission worked with the Community Agency for Social Inquiry (CASE), who conducted a survey on public perceptions relating to socio-economic rights. It also partnered with the Commission for Gender Equality and the South African National NGO Coalition (SANGOCO) to hold the National Speak out

⁴ Monitoring socio-economic rights in South Africa – The role of the South Africa Human Rights Commission, Report of a Joint Workshop organised by the Community Law Centre (University of the Western Cape; Centre for Human Rights (University of Pretoria) and South African Human Rights Commission, held from 30 June – 1 July 1997.

on Poverty Hearings. Both reports on the survey and the Public Hearings were attached to the first report.

19. These initial initiatives created the foundation for the Commission's role as the national monitoring body. However, they do not provide any details on whether a decision was made on what exactly the Commission would monitor: violations or progressive realisation of socio-economic rights, or both. The analysis of the reports seems to suggest that the Commission focuses more on the latter than the former.
20. The Commission might want to consider having an overview on the state of socio-economic rights in the country during a particular reporting period, including continued statistics and qualitative data on continued socio-economic deprivations (poverty and inequalities). This overview should be produced on the basis of research done by the Commission independently, not on the basis of information received from the government departments. This overview could assist in determining whether measures reportedly taken by the state are designed and implemented to address some of the challenges highlighted in the overview.
21. This overview should then be followed by, in each rights-chapter, a list of key achievements and pertinent challenges in realising a particular right as highlighted in the previous report, and the list of recommendations provide therein.
22. In addition, it is also important that the Commission provide upfront in each chapter indicators and benchmarks against which it monitor progress made.

IV COLLABORATIONS BETWEEN THE SAHRC AND CIVIL SOCIETY ORGANISATIONS BEYOND THE FIRST CYCLE OF REPORTING

23. The collaborative efforts between the Commission and the NGOs played a significant role in establishing the regime for monitoring socio-economic rights. The Commission should be commended for allowing extensive public participation in this regard.
24. The issue of the involvement of civil society organisations in the reporting process has been a sore point. For the first cycle of reporting, the Commission allowed more participation of civil society organisations in the reporting process. But after that, there was disconcerting dwindling of spaces for civil society involvement in the process.
25. In preparation for the second report, civil society involvement was limited only to commenting on the questionnaires (commonly known as 'protocols') which the Commission uses to obtain information from government departments. Information received from the government departments was no longer accessible to the public.

26. According to the representatives of the Commission, the reason for this is that they experienced financial constraints⁵, and that they wanted to maintain the Commission's independence with regard to the assessment of information collected. The Commission, they argued further, withheld the information collected from the public because it was given by the departments in 'good faith' arising out of a specific constitutional duty.
27. Human rights activists and academics have consistently criticised and expressed frustration at the Commission for excluding civic formations from such an important process. They have argued that this approach compromises the far reaching potential of the monitoring process. For example, some commentators have suggested that the involvement of civil society organisations could strengthen the resources and capacity of the Commission to execute its mandate. They argue that NGOs can provide the Commission with their own experiences and evaluation of government programmes and policies pertaining to socio-economic rights which could be used to verify government responses.⁶
28. The commentators also point out that providing information received from the government departments to civil society organisation is important for the latter to prepare shadow reports or alternative reports to Parliament parallel to that of the Commission⁷. In this way, the Commission would still maintain its independent assessment of the information without the influence of civil society.
29. Furthermore, some commentators also contended that the lack of effective participation by NGOs in the report process paints a bad picture about the Commission. They argue that 'as the premier institution tasked with the promotion and monitoring of human rights in South Africa, the Commission should operate in a transparent, open and participatory manner'.⁸ This is in accordance with the constitutional values of openness, responsiveness and accountability.
30. We share the same sentiments with these commentators. We strongly believe that the Commission ought to be seen to be the guardian of human rights norms and democratic principles of transparency, openness and public participation. In human rights terms, government are always compelled to realise the rights effectively if they know that their decisions are subject to public scrutiny and require justification. This possibility is compromised if information obtained from government is held as a strongly guarded secret.

⁵ Busi Sithole and Zandile Nkanyane, 1999. Monitoring socio-economic rights: The SA Human Rights Commission's Second Annual Cycle, *ESR Review*, 2(2)

⁶ For example, Danie Brand, 1999. The SA Human Rights Commission: First Economic and Social Rights Report *ESR Review* 2(1); Gina Bekker, 1999. An NGO Shadow Report on Socio-Economic Rights, *ESR Review* 2(2) and Danie Brand and Sandra Liebenberg, 1999. The South African Human Rights Commission, The Second Economic and Social Rights Report, *ESR Review* 2(3).

⁷ Christof Heyns, 1999. Update on the SA Human Rights Commission: Switching on the NGO Monitor Screens, *ESR Review*, 1(2)

⁸ Brand and Liebenberg (note 7 above)

31. We are of the view that if the Commission believes that the civil society involvement in its reporting process would compromise its independent status, it should simply make the raw information received from the government departments available and accessible to the public.
32. As Brand and Liebenberg asked, what possible ‘harm’ could be caused by the release of information for public record?⁹ Government departments have a duty to make information on social programmes and policies affecting people’s lives available and accessible for public scrutiny. The fact that government departments have given information to the Commission does not preclude the latter from making available the same information received to the public, as some of it would already be available to the public, for better analysis by different institutions.
33. It is defeatist of the Commission not to make this information publicly accessible given its role as the guardian or promoter of the Promotion of Access to Information Act.
34. In addition, the Commission should be aware of the fact that one of the major barriers to accessing socio-economic rights by poor and marginalised groups is the lack of access to information about existing social policies and programmes that seek to provide certain services. Government departments have a tendency to withhold important information from its beneficiaries or simply do not create awareness on a particular social policy.
35. According to the study we conducted on the implications of privatisation for the enjoyment of the right to water in two towns in the Eastern Cape, the members of the community we interviewed did not know of the indigent policy that aims to assist poor people who cannot afford to pay for basic services like water and electricity. The study concluded that while the policy existed, officials at the municipalities did not inform the people of this policy.¹⁰
36. The Commission should take a closer look into the manner in which it operates in order to strengthen its reputation as the premier human rights institution. Public participation is a central feature of South Africa’s constitutional democracy.
37. The Commission cannot purport to fully promote the respect, protection and fulfilment of the rights in the Constitution unless it entertains and evaluates information from all sectors of society, including civil society. All sectors of society are affected by human rights violations and equally benefit in their protection. It is, therefore, only logical that any efforts to protect these rights is concerted and opened up to the public.

⁹ Ibid

¹⁰ Report on *The effect of privatization and commercialization of water services on the right to water: grassroots experience in Lukhanji and Amahlati*, Community Law Centre, August 2004 accessible on www.communitylawcentre.org.za

V THE PROTOCOLS

38. The content and format of the protocols have been evolving over time. The first set of protocols was developed with the view that the information requested should not be too much. It focused on clearly defined, narrow and limited information – a ‘minimalist approach’.
39. The second set of protocols took a ‘maximalist approach’. The Commission developed indicators, methodology, information gathering and monitoring systems as well as quantitative questions some of which were incorporated into the protocols for that cycle. Unlike the first set, the second set of protocols was extensive and requested detailed statistical data from government departments.
40. Some have rightfully raised concerns about the capacity and skills of the Commission in analysing statistical and budgetary data. They have argued that the strength of the human rights institution is not in analysing statistics.¹¹ Some authors have even pointed out that statistical information is readily available, in better analysis from the relevant institutions such as Statistics South Africa.
41. Jurisprudence on socio-economic rights assists in the monitoring and assessment of the measures taken to realise these rights. When the protocols were first generated, jurisprudence on socio-economic rights to provide some guidance to the monitoring process was glaringly lacking. The only socio-economic rights case at the time was that of *Soobramoney v Minister of Health, KwaZulu Natal* (1997) [on the right of access to health care].
42. However, since 2000, jurisprudence in this regard has evolved dramatically. The Constitutional Court judgments in *Government of the Republic of South Africa v Grootboom and Others*¹², *Minister of Health and Others v Treatment Action Campaign*¹³, *Khosa and Others v Minister of Social Development and Another*; *Mahlaule and Others v Minister of Social Development and Another*¹⁴ cases, to mention a few, have undoubtedly shed light on the nature and scope of the obligations of the state in relation to socio-economic rights.
43. Accordingly, the Commission has, to a larger extent, utilised the principles emanating from these judgments in monitoring and assessing whether the state is complying with its constitutional obligations. A landmark feature of these judgments is the development of the reasonableness standard. This standard has shaped the manner in which government delivers socio-economic services and is an essential guiding tool for advocacy, monitoring and assessment.
44. However, this standard has not been reflected visibly in the protocols until the 6th protocol for 2003/2006 period. Yet, in its assessment, the Commission has

¹¹ Brand and Liebenberg (note 7 above)

¹² 2000 (11) BCLR 1169 (CC)

¹³ 2002 (10) BCLR 1075 (CC).

¹⁴ 2004 (6) BCLR 569 (CC).

been using the standard to a limited extent. It is not clear how this has affected the information gathering process. The Commission should integrate the elements of the reasonableness review in their protocols and use this review more in their monitoring and assessment. This will help in creating a better and clearer understanding of the meaning of the standard and also develop it even further. In turn, this will also minimise the government susceptibility to court challenges.

45. The protocols should request specific information pertaining to the government performance on the key elements of the reasonableness standard. Currently, these protocols focus more on the generic obligation of the state to 'respect, promote, protect and fulfil' the rights (section 7(2)), and have broad questions on adopted legislative, policy and programmatic measures. More emphasis needs to be placed on whether the measures taken are "comprehensive, coherent, coordinated, flexible, reasonably formulated and implemented, and pay attention to the needs of those in desperate circumstances, transparent and allow for participation of relevant stakeholders".
46. Key issues pertaining to socio-economic rights include poor implementation of policies, poor communication and lack of access to information as well as lack of implementation of court orders. The Commission needs to pay more attention on requesting information relating to how a particular government department has been implementing court judgments and orders. The Commission does not have to be requested by the court to monitor the implementation of court orders. This duty comes naturally from the broader monitoring role of the Commission.

VI SOURCE OF INFORMATION: THE TARGET GROUPS

47. According to its reports, the Commission has been experiencing problems in getting information from the organs of state. Some departments have been uncooperative to the process and tardy in their responses. They would provide inadequate information or would not meet the deadlines. This has affected the production process of these reports and has forced the Commission to invoke its power of subpoenas to compel government representatives to cooperate with the monitoring process. The negative effects of this have of course been the creation of tensions between the institution and the state.
48. While the first three sets of protocols were directed at the national and provincial spheres of government, the fourth set of protocols included the Metropolitan Councils and parastatals. When it comes to the latter, the Commission posed broad questions on their understanding of their obligations in terms of section 7(2) and schedule 4 and 5 of the Constitution.
49. However, the monitoring process does not end with the government providing the requested information. Such information needs to be verified by the Commission through various means, including internal research and consultation with the affected communities to assess the impact of the

measures on the ground. As noted, stakeholders such as civil society organisations and statistics institutions could also provide useful data that could be used to verify the information received. The Commission should solicit divergent views from these stakeholders on the impact of government policies and programmes.

50. It is however commendable again that, in preparation for the 6th report (2003 – 2006), the Commission embarked on an extensive consultative process with the disadvantaged and vulnerable communities around the country on whether the policies implemented by government are reaching the intended beneficiaries.

VII THE SUBSTANCE OF THE REPORTS GENERATED THUS FAR

51. The reports of the Commission ought to be informative tools on how far the government departments are progressing in realising socio-economic rights. However, the substance of some of these reports appears extremely weak, and at times, seemingly poorly researched and written. The last one (2003 – 2006) is perhaps the worst. We noted the following issues:

a) Themes covered by the reports

The information received is often structured into the obligation to ‘respect, promote, protect and fulfil’ as well as into ‘legislation, policy and budgets’. This structuring of information is arguably consistent with the obligations imposed on the state by the Constitution.

However, three concerns arise from this. The first is that the analysis is often weak. At times, measures are not analysed but merely mentioned and described as they are in legislative or policy document. This is particularly noticeable in the last report (2003 – 2006). The reason for this could be the lack of expertise and skills within the institution to critically engage with some government documents – which begs the question of the capacity of research staff to analyse policies and laws aimed at realising socio-economic rights.

The Commission does not seem to take advantage of the availability and accessibility of the wealth of resource materials produced by other human rights formations, academic institutions and other sectors which analyses government programmes and laws in a better and comprehensive format. Nor does it seem as though the Commission seeks outside professional assistance, for example, through using academics to analyse certain sophisticated and complex government documents given their specialisation in a particular field.

The second concern is that, as noted above, there seem to be far too little attempt to also analyse information according to the elements of the reasonableness standard. We strongly believe that the reasonable review provides a useful standard against which to measure if government was complying with its constitutional obligations. It should therefore be integrated more boldly in the analysis of information collected or even in the protocols.

The third concern relates to the indicators of progress. The reports seem to place too much reliance on statistics to measure progress. Statistics in South Africa, like in other countries, are highly contested. Statistics that government often uses are usually misleading as they often paint a biased (often good) picture of progress made in the delivery of services. Usually, these statistics would show numbers of, for example, people who have access to water but exclude figures on those disconnected afterwards. It is not clear if the Commission ever verifies the statistics received from government.

Statistics are quantitative in nature. Therefore, they do not reveal issues of quality of services delivered to the people. It is not clear how the Commission evaluates the qualitative aspect of data received. Will it do this through its community visits or some other kind of inspection?

b) Benchmarks: The Millennium Development Goals

The Millennium Development Goals (MDGs) are crucial to the realisation of socio-economic rights. They are international benchmarks which South Africa must meet. Government itself often speaks of its commitment to achieve these goals, and at times, sings praises that it is ahead in meeting them.

We strongly feel that the future reports should therefore contain some broad analysis of the progress South Africa is making in achieving the MDGs. The Commission should ask each department to provide information in this regard. This should not be burdensome to the government because such information is already being compiled by the government for reporting to the relevant United Nations agencies.

c) Structure and length

The structure and length of the reports appears to be inconsistent, and at times, uncoordinated. In earlier reports, in addition to the abovementioned themes, the critique of the information received formed part of the core sections of the reports. In the last report, some chapters do not have this important section, meaning that the information received is merely presented to the readers in its raw, descriptive format. In the same report, the critique and analysis is very short – a paragraph per chapter at times, and scanty for some chapters.

The length of the reports varies considerably. While the first 5 reports were reasonably lengthy in size (with the average pages of 300), the last one was shockingly short (only 126 pages long). Considering the fact that, unlike the first five reports, the 6th report covers three instead of two years of reporting and that it also includes information solicited from community case studies as well as the delays in its production, it is puzzling how the Commission came up with only 126 page report. It is really astonishing that the Commission produced such a short and shoddy report. The report provided little details of the progress made in implementing socio-economic rights.

d) Lack of linkages between reports

Another consistent criticism levelled against the Commission is its failure to create linkages between the reports. Often reports offer little reflection on whether the recommendations made in the previous reports were being taken seriously, at least some highlights of progress or lack thereof in implementing socio-economic rights in line with the Commission's suggestions. Although the Commission attempts to do this in its last report, two concerns still remain: firstly, the reflection of previous recommendations is not done in all the chapters in the report.

Secondly, where it is done, very little critical analysis (if any) is given of whether government departments implemented the recommendations during the reporting period and if so, how so, and if not, why not.

e) Implementation of court orders

Information about progress in the implementation of court orders pertaining to socio-economic rights seem to be absent in almost all the reports. We believe strongly that the Commission should request information on progress made by the departments in implementing orders that had been granted against them during the reporting period. As noted, we believe that this obligation is in line with the Commission's monitoring role in general.

52. Of course, the quality of the reports is dependent on the quality and quantity of the information received from the government departments. According to the Commission, a number of challenges affect the compilation of the reports. Some of these have already been mentioned above: insufficient information provided, late responses to the protocols, and lack of resources for the Commission to discharge its mandate effectively.

53. Not mentioned above are: the continued lack of understanding of constitutional obligations by government departments and lack of adequate information management systems in most of these departments. These challenges have been experienced with all the previous reporting cycles too. The Commission is addressing this by continuously revising its protocols for each reporting cycle.

VIII. THE ROLE OF THE SAHRC IN MONITORING SOUTH AFRICA'S COMPLIANCE WITH INTERNATIONAL OBLIGATIONS

54. South Africa has obligations in terms of several international human rights instruments it has ratified. It is important that the Commission monitors South Africa's compliance with the ratified human rights instruments. While mindful of the fact that international instruments have their own monitoring and supervising bodies, the Commission should at least function as a local voice for these international bodies since their work complement each other. Measures to realise socio-economic rights include those that the government takes outside of the national borders.

55. According to the Paris Principles, the Commission has the general competence to promote and protect human rights.¹⁵ It also has a specific responsibility to encourage their governments to ratify and implement international human rights instruments. The Commission should therefore reflect in its monitoring reports that it is monitoring South Africa's compliance with international obligations. It can do this by urging government to report to the relevant international monitoring bodies and to provide information on such reporting to the Commission.
56. In accordance with the Paris Principles, the Commission should take the lead in advocating for the ratification of the International Covenant on Economic, Social and Cultural Rights, which South Africa has only signed thus far. By ratifying, South Africa will be confirming to the international community its commitment to realise socio-economic rights.
57. It is noted that the Commission first recommended that the important Covenant be ratified in its 1998 – 1999 report. However, this recommendation has until today not been implemented. It is not clear if the Commission has ever engaged with the government on this issue through its reporting procedure, and if it did, what explanations were given.
58. One possible explanation for South Africa not to ratifying or for delaying to ratify the Covenant could be because of the fact socio-economic rights are firmly protected South Africa's Constitution. However, the Commission needs to diffuse the perception that South Africa need not ratify the Covenant simply because it has entrenched socio-economic rights in the Constitution. It should inform the government and the public of the benefits and advantages that flow from ratifying such an instrument¹⁶, and the negative consequences of not ratifying.
59. The Commission should request information on why the government has not ratified the Covenant and when the government intends to do so. It should take the lead in naming and shaming government for its failure to ratify this instrument.
60. In addition, measures to realise socio-economic rights include South Africa has adopted several international declarations and plans of action including those that flow from key international conferences. Although these commitments are not legally binding, the Commission should persuade the government to implement them as part of the measures to realise socio-economic rights. For example, the Commission could ask for information on the measures government is taking to implement the recently adopted Voluntary Guidelines for the progressive realisation of the right to adequate food in the national context (2005).

¹⁵ Paris Principles on the National Institutions for the Promotion and Protection of Human Rights, A/RES/48/134, 85 plenary meeting, 20 December 1993.

¹⁶ For some benefits and advantages, see, for example, Ariranga Pillay, 2002. The International Covenant on Economic, Social and Cultural Rights: Time for South Africa to ratify

X CONCLUSION

61. We believe that the integrity, credibility of, and respect for, the Commission depend on the manner in which it operates and the quality of its outputs. We are concerned that some of the issues raised in this submission might have already caused enormous damage to the reputation of the Commission.
62. Having said that, the Commission is, in our view, the most effective institution supporting constitutional democracy. And we also believe the challenges it may have faced during the first decade and the issues we highlighted in this submission are not insurmountable. We are working, and we will continue to work, with the Commission in dealing with them.
63. We do appreciate that the Commission's mandate is too broad, covering anything and everything that has to do with human rights. We also understand the constraints that would come with this broad mandate. Save to say that this is the nature of national human rights institutions, the Commission is over-stretched simply because of the ineffectiveness of other sister institutions, notably the Commission for Gender Equality and the Commission on Cultural, Linguistic and Religious Rights.
64. In this regard, we appeal to Parliament to seriously consider, amongst other things, advocating for an increase of the Commission's budget so as to enable it to effectively and efficiently discharge its duties. We also believe that matters relating to the ineffectiveness and invisibility of other sister commissions will be dealt with by the Ad Hoc Committee.

XI RECOMMENDATIONS

65. In an attempt to address some of the issues discussed in this submission, we have the following recommendations.
 - a. The Commission should involve civil society and other key institutions in the reporting process more strongly. The Commission needs the wealth of expertise and skills that these formations have in order to produce credible, quality and cutting-edge reports, as well as to ensure that their reports are promoted and taken seriously by government departments.
 - b. The Commission should make the information received from the government departments available to and accessible by the public.
 - c. The Commission should consider commissioning the production of the report to a team of experts in human rights, economics, statistics and social science. The Commission's researchers would do background research, gather information from the government departments, and do all that is necessary to enable the team of experts to produce the report.

- d. The Commission should consider having a broad overview on the state of socio-economic rights in the country during a particular reporting period, including statistics and qualitative data on continued socio-economic deprivations (poverty and inequalities). This overview should then be followed by, in each rights-chapter, a list of key achievements and pertinent challenges in realising a particular right as highlighted in the previous report, and the list of recommendations provide therein.
- e. The Commission should establish ways of verifying information given to them by the departments. It should solicit divergent views on the impact of the government policies and programmes.
- f. The Protocols should also request information relating to the measures taken to implement court orders by particular departments that had cases on socio-economic rights decided against them during the reporting period.
- g. The reports should always provide a detailed analysis of whether government departments are acting reasonably in their efforts to meet constitutional obligations.
- h. In addition to doing community visits, the Commission should also participate in imbizo's so as to hear community voices regarding the impact or lack thereof government measures pertaining to socio-economic rights.
- i. The Commission should promote its findings and recommendations and make follow up sessions with each of the government departments.
- j. The Commission might want to consider providing an overview of the socio-economic challenges that continue to be faced by the majority of the people in South Africa (the state of socio-economic rights in SA). Having done this, it should then reflect on previous reports, particularly highlight persistent challenges and recommendations made by the Commission to overcome them, and an evaluation of whether those recommendations have been or are being implemented.
- k. The Commission should monitor South Africa's compliance with rectified international human rights laws. At the very least, the Commission should lobby government to report to the relevant international bodies and to provide information on such reporting to it.
- l. Furthermore, the Commission should take the lead in advocating for the ratification of important international instruments such as the International Covenant on Economic, Social and Cultural Rights. It should request information on why this Covenant is not ratified and when the government intends will be rectified. It should take the lead in naming and shaming government for its failure to ratify this

instrument. It should, in its report, highlight the importance and benefits of doing so.

- m. The Commission should monitor the implementation of other socio-economic rights-related commitments made by the government to the international community, especially those that flow from important international conferences and events. For example, the Commission should request information about progress South Africa is making in achieving MDGs, the Voluntary guidelines on the right to food etc.