



SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Annual Report 2004/2005

Ms Baleka Mbete, MP
Speaker of the National Assembly

Pursuant to the provisions of section 40(1) (e) of the Public Finance Management Act (Act No. 1 of 1999), I am pleased to submit the Ninth Annual Report of the South African Human Rights Commission for the period 1 April 2004 – 31 March 2005.

Please find, annexed to the report, the Commission's Annual Report as per section 83(1) (b) and 84 of the Promotion of Access to Information Act (PAIA), No 2 of 2000.

A handwritten signature in black ink, appearing to read "L. Mokate".

Lindiwe Mokate
CHIEF EXECUTIVE OFFICER





South African Human Rights Commission

Ninth Annual Report

April 2004 – March 2005

List of Abbreviations

AIDS	Acquired Immuno-deficiency Syndrome
ANHRIs	African National Human Rights Institutions
<i>AmaKhosi</i>	Traditional leaders
ARNESCR	African Research Network on Economic, Social and Cultural Rights
AU	African Union
CBO	Community Based Organisation
CCMA	Commission for Conciliation, Mediation and Arbitration
CGE	Commission on Gender Equality
CRL Commission	Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities
DHRE	Democracy and Human Rights Education
FDHRE	Forum for Democracy and Human Rights Education
HIV	Human Immuno-deficiency Virus
ICC	International Coordinating Committee
ICD	Independent Complaints Directorate
IEC	Independent Electoral Commission
IT	Information Technology
LHR	Lawyers for Human Rights
MTEF	Medium Term Expenditure Framework
NACHRET	National Centre for Human Rights Education and Training
NGO	Non-governmental Organisation
NEHAWU	National Education, Health and Allied Workers Union
NQF	National Qualifications Framework
NSB	National Standards Body
PAIA	Promotion of Access to Information Act
PANSALB	Pan South African Language Board
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PFMA	Public Finance Management Act
OPP	Office of the Public Protector
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAQA	South African Qualifications Authority
SGB	Standards Generating Body
TAU	Transvaal Agriculture Union
DLA	Department of Land Affairs
UN	United Nations
UNDP	United Nations Development Programme
UNCHR	United Nations Commission on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNHCHR	United Nations High Commission for Human Rights
UNICEF	United Nations Children's Fund

ISBN: 0-621-36303-0
RP: 208/2005



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Foreword by the Chairperson



At the close of the tenth anniversary of our young democracy, there can be little argument that the human rights values underpinning our democratic dispensation become increasingly entrenched with the passage of time. The language and message of human rights define critical processes, such as law and policy-making, the relationship between citizens and the state, and the relationships among and between citizens and, in many instances, non-citizens. Notwithstanding the fact that they are most often contested, and that differing interpretations of human rights widely exist, more and more of our people have come to rely on and assert their rights. This can only be healthy for our democracy. However, it is also important that as people assert and claim their rights, they accept the responsibilities that come with having rights.

The South African Human Rights Commission (Commission) is one of the institutions with the responsibility of ensuring that human rights remain at the centre of debate and dialogue in the nation; that the lofty provisions in the Bill of Rights are translated into reality for the many who need their protection, and that equality and human dignity are more than legal concepts, but values that are internalised and reflected in our relations with each other. To enable this, the mission and the vision of the Commission, as well as its programmes, must have a synergy with national imperatives. Thus overcoming poverty and promoting equality remain the core business of the Commission.

This report highlights how we have translated this vision into meaningful and effective programmes that have impacted positively on the lives of people. We have in the year under review made good on our commitment to take our work to the communities most in need, and there has been a substantial focus on rural communities. We continue to be a resource to Government by way of the provision of advice, training and the development of joint programmes and activities. Our relationship with Parliament continues to improve and the views and opinions of the Commission are increasingly sought on a variety of matters. We have also developed positive working relations with other Chapter Nine Institutions, in the belief that while we share different mandates, we advance the same objective, namely the growth of our constitutional democracy.

The reality is that even with all that we have achieved as a nation, the deficits remain challenging in overcoming the legacy of discrimination and the grinding effects of poverty. The evidence of this confronts us on a daily basis and thus, as we start a new year, we do so mindful that we must continue to strive to make a positive difference.

In conclusion, it would be appropriate to thank my colleagues in the Commission, the donor community and all the people of this country who continue to support the Commission.

A handwritten signature in black ink, appearing to read 'Jody Kollapen', written over a light blue horizontal line.

Jody Kollapen
Chairperson



Introduction by the Chief Executive Officer

The South African Human Rights Commission is proud to present its Annual Report for the period April 2004 to March 2005 to Parliament and to all South Africans. The Commission's constitutional mandate - to promote, monitor and protect human rights in South Africa - is a daunting one, especially given the impoverishment and vast disparities that continue to affect our society. This report attests to the growing momentum achieved by the Commission in entrenching constitutional democracy and human rights. Reflected in the report are the successes and challenges of the SAHRC in relation to the priorities, objectives and targets defined by our Strategic Plan 2004/05.



The Commission has identified its priority areas as the alleviation of poverty and the achievement of equality. Essential in both these areas is the process of monitoring the observance of human rights and providing information to form the basis of interventions. In this regard, the Commission has focused on improving its monitoring of economic and social rights through fieldwork at community level. The Commission produced a guide to assist the public to make use of the Promotion of Access to Information Act, as contemplated in section 10 of the act. The annual report reflecting on the progress relating to the implementation of the Promotion of Access to Information Act is attached to this report.

The number of complaints of human rights violations received by the Commission continues to increase year-on-year, testifying to the increasing awareness of human rights in the country and the increasing public profile of the Commission. The Inquiry into Human Rights Violations in the Khomani San Community brought the plight of this community to the fore. It also reflects the Commission's commitment to reach out to the most marginalised sectors of South African society.

The Omnibus programme, a multi-faceted education and training tool, allows the Commission to work in rural communities more frequently. Human Rights Week was celebrated with an intensive programme in the Northern Cape. The focus of this programme was the Community Voices Forum where youth spoke of their experiences around the right to education.

In the financial year, the Commission established offices in Mpumalanga, so the Commission now has physical presence in all provinces except the North West. Provincial offices ensure the services of the Commission are offered within local communities.

The Commission endeavours to be a resource for human rights practitioners and institutions internationally. The Commission has strengthened its engagement with United Nations agencies and organs of the Southern African Development Community and the African Union.

To mark the decade of freedom, research was commissioned to review ten years of human rights and democracy in South Africa. A two-day conference was convened to allow stakeholders to engage with this research. The study reviews the historical context of human rights in South Africa, explores the extent to which human rights have been realised in the period 1994 to 2004, provides



critical analysis of programmes, policies and approaches in addressing human rights, and recommends strategies for realising these rights in the next ten years. As we enter the tenth anniversary of the Commission's inauguration, we are carefully examining our functioning to ensure a continuing impact on the human rights landscape in South Africa over the next ten years.



Lindiwe Mokate
Chief Executive Officer



SECTION 1: LEGISLATIVE FRAMEWORK

Governing Principles

The Commission is one of the institutions established by Chapter Nine of the South African Constitution to support constitutional democracy in South Africa. The governing principles of these institutions are contained in section 181 of the Constitution:

- (a) 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.
- (b) 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.
- (c) No person or organ of state may interfere with the functioning of these institutions.
- (d) 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.

The Mandate of the Commission

The functions and powers of the Commission, as contained in section 184 of the Constitution are the following:

Functions

- (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.

Powers

- (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;
- (d) to educate; and
- (e) to 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.

The Commission has the additional powers and functions prescribed by national legislation.

Mission Statement

The Commission is a national institution established to entrench constitutional democracy through the promotion and protection of human rights by:

- Addressing human rights violations and seeking effective redress for such violations
- Monitoring and assessing the observance of human rights
- Raising awareness of human rights issues
- Educating and training on human rights



SECTION 2: PROGRAMME PERFORMANCE

The Strategic Plan guides the Commission's work and is the basis against which the Commission measures its performance in its Annual Report. This section reports on the performance of the Commission per programme in relation to the Strategic Plan of 2004/05.

Key Measurable Objectives

In order to fulfill its mission to be an effective institution for the promotion and protection of human rights, the Commission defined the following key objectives:

- To advance the public and parliamentary accountability of the Commission's work and maximise the utilisation of public resources through sound strategic management and efficient financial and administrative systems and procedures
- To entrench the Commission as the major resource and primary focal point for human rights promotion, protection and monitoring in the country
- To publicise and convey the role and work of the Commission to the general public
- To protect human rights by investigating individual and systemic complaints of human rights violations and provide appropriate redress
- To monitor human rights by providing comprehensive research and documentation mechanisms designed to advance and assess human rights, especially social and economic rights
- To promote human rights and contribute to the development of a sustainable culture of human rights through education and training, community outreach and public awareness campaigns

These objectives correspond to the Commission's legislative mandate and its programmes and are elaborated in the outputs, service delivery indicators and targets defined in the Strategic Plan.

Programmes

The Commission's work is divided into the following eight programmes:

- Programme 1: Strategic Management
- Programme 2: Finance and Administration
- Programme 3: Commissioners
- Programme 4: Media and Communications
- Programme 5: Legal Services
- Programme 6: Research and Documentation
- Programme 7: Education and Training
- Programme 8: Provinces

The Head Office is based in Gauteng, and there are 7 other provincial offices including Mpumalanga which has been recently opened this year. The Commission now has offices in all provinces except the North West province. Provincial offices raise awareness and deal with violations of human rights at the provincial and local level. In addition to day-to-day communication, the



Commission strives to integrate its work through structured interactions, including: quarterly plenary meetings (of Commissioners and the Secretariat), management meetings, and meetings of inter-departmental committees, which are chaired by Commissioners. There is also a Complaints Committee, an Equality Committee and a Promotion of Access to Information Committee. The above measures have been instituted to ensure that the Commission's programmes work in an integrated manner.

Strategic Management

Overview of the service delivery environment for 2004/05

The Commission is the primary independent protector and promoter of human rights services in the country. These services focus on the:

- promotion of human rights through education, training, public awareness and public outreach
- protection of human rights through complaints management and broader legal services
- assessment of the observance of human rights through monitoring and research.

Economic and Social Rights - The Commission introduced field-work to verify and supplement information the Commission receives from the organs of the State through protocols. This enabled the Commission to independently verify the information so as to make the report current and accurate.

PEPUDA - The Equality Unit's efforts to fully implement the Equality Act was limited by the fact that the promotional aspects of the regulations had not been promulgated.

PAIA - The delay by the Department of Justice in announcing exemptions for certain categories of private bodies from the requirements of Section 51 of PAIA created a challenge for the Commission.

Legal Services - Complainants who seek assistance in terms of PAIA often approach the Commission on the verge or outside the prescribed 30-day period for making a High Court application. Thus, a proposal for the amendment of this legislation has been forwarded to the relevant ministry.

The existing disparities in our society are apparent in most of the cases relating to unfair discrimination before the Equality Courts (in particular racism cases). The respondents appear with their legal representatives against poor and semi-educated complainants. The Commission has taken upon itself to represent these complainants and alternatively to arrange legal representation on their behalf.

Education and Training – Providing training and materials in all 11 official languages and other languages is a major inhibiting factor and limits the Commission's outreach capacity. The adoption of the curriculum statements as policy for schools added to the responsibilities of the Commission to train professionals at all levels of the education system. Training obligations as reflected in PEPUDA and PAIA presented the Commission with an additional challenge.



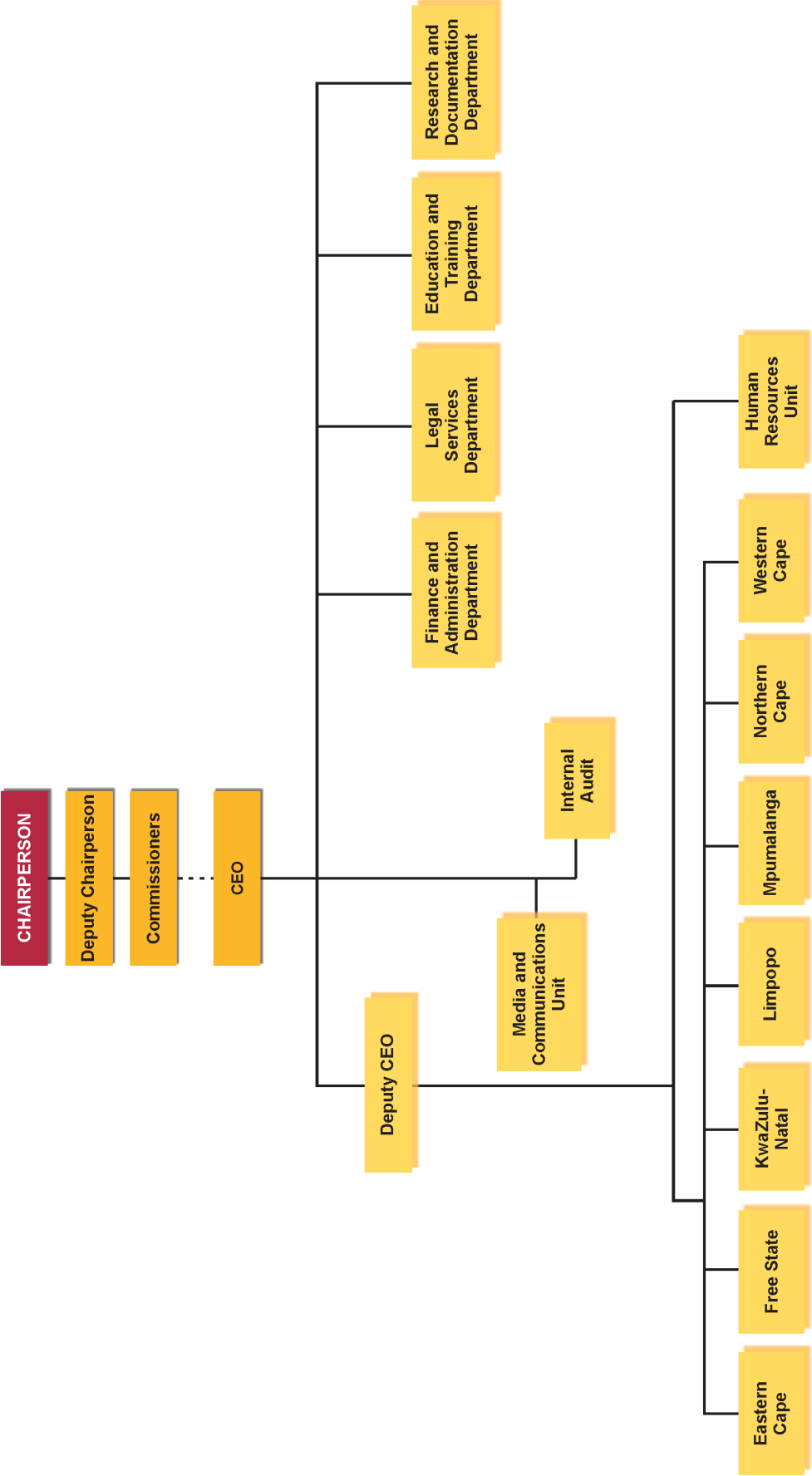
Overview of the organisational environment for 2004/05

The Commission has successfully concluded negotiations with the National Education, Health and Allied Workers Union and is committed to recognize this union in order to contribute to an environment that is characterized by fair employee relations. The existing staff regulations were revised and adopted by the Commission, pending promulgation.

The various components that make up the framework for Supply Chain Management are in place. Financial administration policies and procedures were adopted and a new head of the unit was appointed.



Organisational Structure



Programme 1 and 2: Strategic Management

Purpose: To ensure operations comply with the legislative and constitutional obligations, strategic objectives and national priorities of the Commission.

Measurable Objectives:

- To ensure constitutional and legislative compliance within the operations of the Commission
- To conduct strategic reviews in response to the internal and external environment
- To guarantee the alignment of the Commission programmes with its strategic objectives and national priorities
- To manage effective accountability mechanisms

Service Delivery Objectives and Indicators

Recent Outputs

Project Management – In addition to its programmatic work, the Commission has undertaken several projects in key areas, and has secured additional funding to enable this work.

- Civil Society Advocacy Programme

The Civil Society Advocacy Programme, funded by the European Union, is a programme that will benefit three Chapter 9 institutions namely the South African Human Rights Commission, the Commission for Gender Equality (CGE) and the Office of the Public Protector (OPP). The South African Human Rights Commission is the contracting and lead agency in the programme. The programme will address weaknesses in existing advocacy interventions and enable targeted communities in the Eastern Cape, Limpopo and KwaZulu-Natal to effectively claim and access their constitutional rights.

- Ten Year Review

Research was commissioned to review the ten years of human rights and democracy in South Africa, and a two-day conference was convened to allow stakeholders to engage with this research. The study reviews the historical context of human rights in South Africa; explores the extent to which human rights have been realised in the period 1994 to 2004; provides critical analysis of programmes, policies and approaches in addressing human rights; and recommends strategies for realising these rights in the next ten years.

- Promotion of Equality and Prevention of Unfair Discrimination Act

A project on PEPUDA is being carried out. This project aims at raising awareness about the act and to assist communities and individuals to access their rights in terms of the act. The project also delivers briefing sessions and workshops for government departments and NGOs.



National and Provincial Coordination - The Commission has seven provincial offices situated in Limpopo, Free State, Western Cape, KwaZulu Natal, Northern Cape, Mpumalanga and Eastern Cape, with the Head Office being situated in Gauteng. The provincial offices engage with the peculiarities of the provinces.

Consultancy Services - This programme implements regional and international liaison with other institutions, and contributes to the favourable positioning of the Commission within the human rights field. The Commission acted as a resource in at least 12 countries in Africa, South America, Asia and Europe and also met with foreign delegations visiting South Africa from across the world. During the period under review, the Commission hosted the Secretariat for African National Human Rights Institutions.

Recent Outputs

Finance and Administration

Financial Management and Administration Systems – The payroll system has been integrated with the Pastel accounting system, a risk management policy is in place and a fraud prevention policy has been adopted. All payments are effected through an electronic payment system in order to reduce costs and prevent fraudulent transactions. The requirements of supply chain management are being implemented.

Information and Communication Technology Systems – The IT policy was updated and implemented. An intranet system is operational, as well as an improved web-based complaints management system. An uninterrupted power supply system (UPS) was installed in Head Office and in the provincial offices to prevent the loss of information that might occur as a result of power outages and to protect the servers.

Audit Services – There is an outsourced internal audit function. The Internal Audit Committee continues to function and met at least four times during the period under review.

Building and Facilities – The tagging of assets was completed during the period under review.

Framework for Legislative and Statutory Compliance – There was substantial compliance with the relevant Public Finance Management Act (PFMA) and Treasury Regulations.

Strategic Reviews and Adherence to Strategic Objectives – Weekly, monthly and quarterly reviews of programmes were conducted. These processes contributed to regular strategic reviews to ensure adherence to the Strategic Plan.

Risk Assessment and Management – A risk management system is in place.

Assessment and Quality Assurance – An effective performance management system is in place and regular assessment of staff and evaluation of programmes are conducted.



Recent Outputs

Human Resources Management

Human Resources Administration – The human resources systems were integrated with the financial systems of the Commission to ensure effective and accurate reporting. In order to ensure efficient and effective utilisation of Human Resources related service providers, the Human Resources unit has concluded service level agreements with the relevant service providers.

Employee Relations – The Commission has successfully concluded substantive negotiations on a Recognition Agreement with NEHAWU as the recognized trade union of the Commission. This structured relationship provided a sound regulatory framework for labour relations within the Commission.

Policies and Procedures – The Commission has implemented interim staff regulations in order to properly regulate the terms and conditions of staff members. These staff regulations are aligned to the regulations of the Public Service. A number of Human Resources policies were developed, refined and implemented.

Organisational Development – The growth of the Commission's staff establishment necessitated an overview of the current organizational structure. The Human Resource Unit was restructured into a fully-fledged Human Resources Directorate, to strengthen its capacity.

Retention of staff – We continue to lose staff to the public service because of the benefits that are available there.

Human Resources Strategy – The Commission ensures regular compliance and reporting in terms of applicable pieces of labour legislation, including but not limited to the Employment Equity Act, Basic Conditions of Employment Act and the Labour Relations Act. In order to enhance in-house capacity building the Commission carried out a training needs analysis to inform development needs of its staff. A number of staff members attended various external training courses aimed at addressing the needs identified. The Commission has a fully functional internship programme aimed at meeting its strategic staffing needs in critical areas, to occupy positions at entry level and to prepare graduates to become contenders for jobs inside and outside the Commission. The internship programme is also aimed at developing an adequate skills base in the human rights field. It is also compliant with the Employment Equity requirements and submitted its Employment Equity report to the Department of Labour.

Job Evaluation System – A Job Evaluation system is in place. In the year under review a number of positions within the Commission were evaluated and its recommendations were duly ratified and implemented. This was done to ensure proper grading of various positions and the determination of the relative worth of each position within the Commission.



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Framework for legislative and statutory compliance	Financial management and administrative systems	Meeting statutory requirements	An unqualified audit report	Achieved
Strategic reviews and adherence to strategic objectives	Review programmes	Compliance with Strategic Plan	Monthly reviews	Weekly, monthly and quarterly reviews
Risk assessment and management Internal auditing	Risk assessment plan External and Internal Audit services	Effective risk assessment Functional external and internal audit	Approved Audit Charter, Fraud Plan, Risk Assessment Plan Unqualified Audit Report	Achieved
Human Resource Strategy	Effective human resource services	Sound employee relations Performance management systems	Recognition agreement April	Achieved Completed Performance Agreements for senior and middle management. Overall Performance Management system initiated
		Job evaluation	June/Ongoing	95 % of positions have been evaluated and new grades have been implemented
		Human resource IT system	May/June/July	Integration between HR and Finance systems completed
		Employment equity Staff regulations	October Ongoing	Achieved Regulations adopted
Assessment and quality assurance	Review of performance	Formal and informal assessments and evaluations	Quarterly	Achieved
Project management	Civil Society Advocacy Programme PEPUDA 10 Year Review of Human Rights	Per project plan	Per project plan	Achieved
National and provincial coordination	Integration of work	Ongoing management and operational support	Ongoing	Ongoing



Service Delivery Achievements
Programme 1: Strategic Management

Section 2: Programme Performance

Section 2: Programme Performance

Service Delivery Achievements
Programme 2: Finance and Administration



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Financial management and administration systems	Effective, efficient and economical financial and administrative systems	Finalisation of annual financial statements for auditing by the Auditor-General by 31 May 2004 in terms of the PFMA	31 May 2004	Achieved
		MTEF budget submission for the 2005/06 – 2007/08 period to National Treasury by 31 July 2004	31 July 2004	Achieved
		Preparation of monthly expenditure reports by 10th of each month to Accounting Officer for submission to Executive Authority and National Treasury by the 15th of each month, in terms of the PFMA provisions	10th of each month to the CEO and 15th of each month to National Treasury	Achieved
		Review financial policy and procedure by 30 June 2004	Ongoing	Finance and Administration systems and procedure manual has been reviewed
Information and communications technology systems	Up to date IT systems to support the Commission's functioning	Development and maintenance of systems, programmes, hardware and software in terms of the Commission's IT Security Policy and Master Systems Plan Complaints management system: support and maintenance	Ongoing	• Intranet operational • Uninterrupted Power Supply (UPS) for head office and provincial offices has been installed • New offices integrated into the IT system • Review of complaints management system initiated • Internet security access server has been deployed • Video conference facility for Mpumalanga Provincial Office was acquired



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Audit services	Financial control through internal audit	Full implementation of internal audit function in terms of Treasury requirements (including 4 meetings for the internal audit committee)	30 November 2004	Achieved
Building and facilities	Maintenance and development of building and facilities	Upgrade building for easy access to people living with disabilities	30 November 2004	Achieved

Programme 3: Commissioners

Purpose: To engender relationships with national, regional and international role-players, and to contribute to policy development and strategy for the Commission.

Measurable Objectives:

- To raise the profile of the Commission by engaging with various stakeholders, including government and civil society on issues relating to human rights
- To ensure strategic interventions on various human rights issues such as policy development
- To contribute to the creation of a human rights body of knowledge
- To ensure the fulfilment of the Commission's constitutional and statutory mandates

Service Delivery Objectives and Indicators

Recent Outputs

The Commissioners worked with the secretariat on complaints management, litigation, access to information, equality and social and economic rights.

Consultative Meetings – This year saw positive trends with regard to working with and supporting government and parliament. The Commission presided over a hearing on Xenophobia to assist the Parliamentary Portfolio Committee on Foreign Affairs and the Portfolio Committee on Home Affairs with their investigations. In addition the Commission views traditional leaders as an important constituency and partner in the promotion and protection of human rights. The Commission met with their decision-making structures and hosted a workshop with AmaKhosi in February 2005. A number of provincial visits were undertaken in order to consolidate the Commission's relations with government, civil society, traditional leaders and other role-players at local level, and to support the work of the Commission in the provinces.

Strategic Interventions – The Commission conducted a site visit at a Pietermaritzburg hospital following allegations of sexual and physical abuse of patients and made recommendations to the Department of Health.

The Commission intervened in bringing the Department of Education and the organised farmers' structures together to discuss the rights of learners on farms.

The Commission presided over the following hearings: the Khomani San Hearing; the hearing on Road Closures and Security Booms; and a hearing on Xenophobia. The Commission also participated in the Human Rights and Democracy Awards organised by the IEC and CGE.

Under the leadership of the Commissioner for the Rights of Older Persons, a series of workshops were held on the Older Persons Bill with older persons, government representatives, and civil society in each province, to feed into the Commission's submission to Parliament on the Bill.



Participation in Regional and International Human Rights Bodies and Monitoring of Treaty Obligations – The Commission participated in the following:

- The World Forum for Human Rights and the French Human Rights League,
- The United Nations Children's Fund (UNICEF) in Tanzania to develop a child abuse strategy,
- A Northern Ireland conference on the Bill of Rights and equality legislation required by the Good Friday Peace accord,
- The process of implementing the constitutional commitment to human rights in China,
- A conference to draft the New Zealand National Action Plan on Human Rights,
- The Global Commission on International Migration's regional hearings for Africa,
- Presentations to delegations from Zambia, Australia and Canada,
- The Fourth Ad Hoc meeting for the development of the United Nations Convention on the Rights of Persons with Disabilities,
- The United Nations Development Programme (UNDP) development report of 2004,
- The Conference of National Human Rights Institutions in Korea,
- The AU Meeting of National Institutions, Addis Ababa,
- Meeting of the International Council on Human Rights Policy in Geneva,
- The 36th session of the African Commission.



Section 2: Programme Performance

Service Delivery Achievements
Programme 3: Commissioners



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Consultative meetings with government ministries, statutory bodies and members of civil society	Consulting and partnering with role-players to enable human rights work	Established presence of Commission and improved promotion, protection and monitoring of human rights in the provinces and nationally Networking and partnering with relevant stakeholders Section 5 Committees - advising the Commission on particular human rights issues and contributing to policy development of the Commission	Quarterly meetings with: - Ministers in government - Civil society - Statutory bodies and other stakeholders/partners	Achieved
Strategic interventions on human rights	Intervening in key areas and for vulnerable communities to secure human rights	Number of interventions in focus areas of the rights of children, persons with disability, older persons and non-nationals; NGO/CBOs; international standards; HIV/Aids, etc Written reporting mechanisms within the Commission on human rights issues for publication to establish a human rights body of knowledge	Ongoing interventions on a monthly basis – target for year at least 12 interventions	Achieved
Attendance of meetings and reports to Coordinating Committee of ANHRIs, United Nations Commission for Human Rights (UNCHR), African Commission and International Coordinating Committee (ICC) Reports on monitoring of treaty obligations and country reports	Facilitating the achievement of human rights through engagement with regional and international human rights bodies	Effective participation in and reporting to regional and international human rights institutions and bodies (and promoting the work of the African Commission) Continuous monitoring of international treaty obligations and country reports of the South African government	Minimum of 3 meetings (African Commission, UNCHR, ICC and Coordinating Committee of ANHRIs)	Achieved

Programme 4: Media and Communications

Purpose: To develop and implement the Commission's internal and external communications strategy, in order to promote the work of the Commission and use media and communications tools to create awareness of human rights issues.

Measurable Objectives:

- To establish a communication friendly environment within the Commission and with stakeholders/role-players
- To promote human rights awareness by implementing an effective and efficient communications strategy
- To promote the work and corporate image of the Commission through public and media relations initiatives

Service Delivery Objectives and Indicators

Recent Outputs

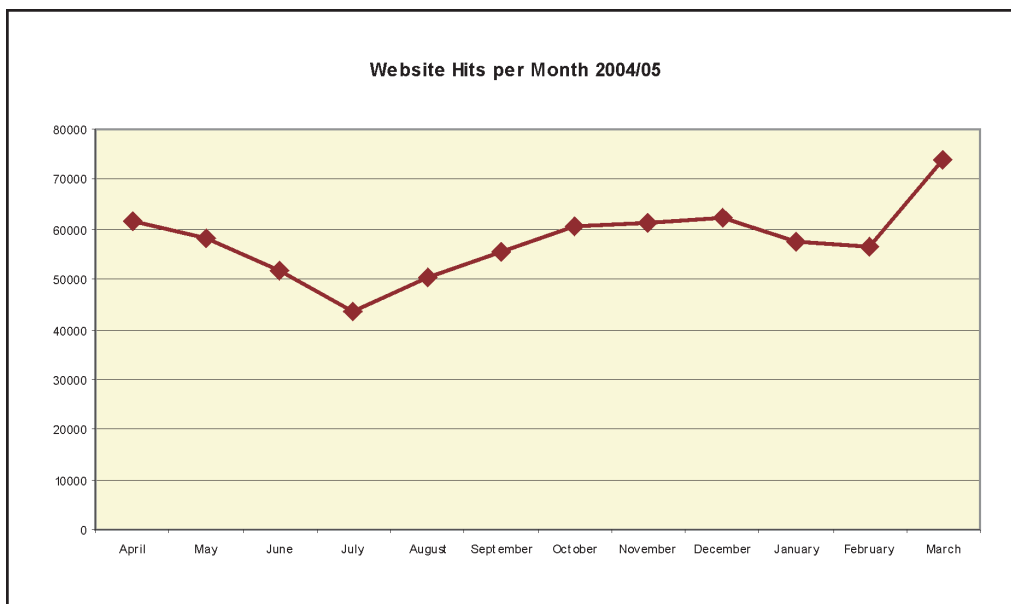
Reports, Publications, Promotional Materials, Website and Intranet – The Commission distributed 12 of its own publications, many in 11 official languages, as well as copies of the Constitution printed by the Department of Justice and Constitutional Development. The number of publications distributed for the year amounted to an estimated 30 000 copies. The main target groups for publications include rural communities, NGOs, CBOs and government institutions. Materials of the Commission are distributed largely through Education and Training Officers and public outreach initiatives, to increase their effectiveness as they were delivered as part of the Commission's engagement with communities. In the case of reports on inquiries or interventions relating to specific communities, these publications are distributed to the relevant stakeholders. Some of the publications for the period are included in the table below. In addition, the Unit produced folders, programmes and information packs for Commission events.

Publications and Materials

- Annual Report March 2003 – April 2004
- Strategic Plan 2005/6
- Report on Human Rights Week March 2004
- Report on the Inquiry into Human Rights Violations in the Khomani San Community
- Report on the Open Hearing on Boom Gates/Road Closures
- Bill of Rights poster
- Northern Cape Office Launch poster
- My Rights My Responsibilities training booklet
- Seasons Greetings Cards
- Promotional material for the launch of the Northern Cape Office
- Promotional material for Human Rights Week
- Pull-up banners

The website is under continuous review to improve its effectiveness. Publications such as the guide on *How to use the PAIA*, and Khomani San and Boom Gates reports are made available via the website. The functionality of the Commission's newsletter Kopanong was reviewed by the Unit and a proposal for a new communication tool, including an electronic newsletter, is under management review.





Media Liaison and Monitoring – Successful media launches have accompanied the release of the various reports and the Unit has ensured that the work of the Commission was constantly covered by all major national, regional and local print and electronic media. The Khomani San Report was covered by 30 media institutions, and syndicated to various other media, both nationally and internationally. The United Nations Africa Division, Department of Political Affairs, New York requested a copy of the report for its records. The Boom Gates Report created much debate in the media and was covered by 30 media institutions. The national broadcaster and other media covered the Commission's Human Rights Day celebrations, and the Commission was approached for media comment and debate on various human rights issues.

The Unit produced approximately 60 press releases and 12 opinion pieces on human rights issues in the media for the period under review. Commissioners and Secretariat members (including provincial staff) appeared in radio and television interviews/ programmes/debates at least 190 times. An emphasis was placed on participation in community radio station programmes. Unsolicited media and other enquiries, combined with the Commission's appearance or comment in national print and broadcast media, amounted to approximately 1300 items for the financial year. The Unit conducted daily media monitoring by subscribing to major newspapers, monitoring television news, checking the websites of national newspapers and news stories on the newswires. Weekly Media Briefs were compiled and distributed to Commissioners and management, consisting of newspaper clippings of the week's human rights stories in the national media. This informed the Commission's research and strategic interventions.

Corporate and PR Initiatives – Advertorials and editorials were placed in the following magazines and publications, chosen strategically to promote the Commission's corporate image. These were: *Top Women in Business and Government - South Africa - The First Ten Years*; *Leadership*; and *Succeed Magazine*.





Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Publications	Reports, publications, promotional materials, website, intranet	Intranet to improve internal communications Production and targeted distribution of the following publications: <i>Koparong</i> , <i>My Rights Your Rights</i> , <i>Annual Report</i> Production and targeted distribution of the following promotional materials: <i>SAHRC General Poster</i> , <i>SAHRC Diary</i> , <i>SAHRC Annual Calendar</i>	Ongoing	Website revamp under management review; intranet to be completed by mid 2005
			Ongoing	Annual Report and <i>My Rights Your Rights (My Rights My Responsibilities)</i> produced and distributed; concept of newsletter <i>Koparong</i> under review
			Once per year	Season's Greeting cards produced and delivered Bill of Rights Posters, Khomani San and Boom Gates Reports edited, designed, printed and distributed; covers and layout of PAIA guide and Economic and Social Rights Reports completed Materials and posters produced and distributed for Northern Cape Launch and materials produced for Human Rights Week
Media	Media liaison, media statements and articles, and media monitoring and consultancy	Quarterly report on Commission's media coverage Improved coverage of the Commission in national and provincial media	Once per quarter	Quarterly reports on the Commission's media coverage were circulated to Senior Management The Commission's appearance in the media has increased over the past year Media Briefs monitoring the media were prepared and circulated to Commissioners and senior management weekly
			Ongoing	

Section 2: Programme Performance

Service Delivery Achievements
Programme 4: Media and Communications



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Corporate and PR Initiatives	Corporate Profiles of the Commission in leading publications	Improved corporate image of the Commission	Ongoing	Advertorials and editorials were placed in four magazines, exceeding the target
		2 Corporate Profiles of the Commission in leading magazines	Twice a year	

Programme 5: Legal Services

Purpose: To protect human rights by investigating individual and systemic human rights violations and taking necessary steps to secure redress.

Measurable Objectives:

- To investigate individual and systemic complaints of human rights violations
- To provide appropriate redress and resolve disputes regarding human rights violations

Service Delivery Objectives and Indicators

Recent Outputs

Complaints Handling – The total number of complaints of human rights violations received by the Commission was 12 194, of which 4 978 were received and processed by head office. Provincial offices received and processed 7216 complaints. The significant increase in complaints received could be attributed to the growing public awareness of the Commission and confidence in its work. The head office accepted 721 complaints as human rights violations and processed them accordingly whilst the provincial offices accepted 2002 complaints. The remainder of the complaints were referred to more appropriate agencies to deal with.

Litigation – Head office has successfully litigated in six major cases. In one of the six cases the Constitutional Court delivered its judgment in the Bhe' case, striking down certain provisions of the Black Administration Act and Intestate Succession Act as discriminatory on the basis of race and gender because they did not allow female spouses, common law wives, girl children, children born out of wedlock and young sons to inherit customarily.

The Commission also obtained judgement in the Muller case before the Equality Court against the respondents to make all courts in South Africa accessible and user-friendly for people with disabilities.

A class action on behalf of all people with disabilities in South Africa was decided upon against a certain air transport company that discriminated by charging extra fares to people who are wheelchair bound.

In terms of PAIA the Commission received a number of complaints and one of these the Commission was unable to resolve it through mediation. The Commission had to take the matter to Court. The prescribed 30 day period for lodging a high court application poses a challenge in that a number of complaints are lodged on the verge of the expiry of that period. A proposal for the amendment of the Act to extend the 30 day period to ninety days (90) was forwarded to the Department of Justice and Constitutional Development.

While the Commission has achieved success with all the cases it has lodged with the Equality Courts on behalf of applicants, the Commission's monitoring process reveals that these courts are not user friendly and accessible to people who cannot afford legal representation.



Court Inspection – This function has been transferred to the Research and Documentation Department.

Hearings and Inquires:

Rights of the indigenous (Khomani San inquiry)

This inquiry focused on the provision of basic/essential services to the Khomani San people in the Askham area since their successful land restitution claim. The focus areas of the inquiry included:

- Their victimisation and harassment by the police
- Victimisation of their kids at school
- Provision of health care services, housing, water, etc.

These hearings were conducted by leading evidence and cross-examination by the Commission members including questions by the panel members.

Xenophobia hearings

- The aim of the open hearing was to allow interested parties to make submissions to the panel with a view to finding a common understanding and to make findings and recommendations in order to change attitudes towards xenophobia.
- These hearings took the format of evidence presentation followed by questions and answers by the audience.

Boom gates and road closure hearings

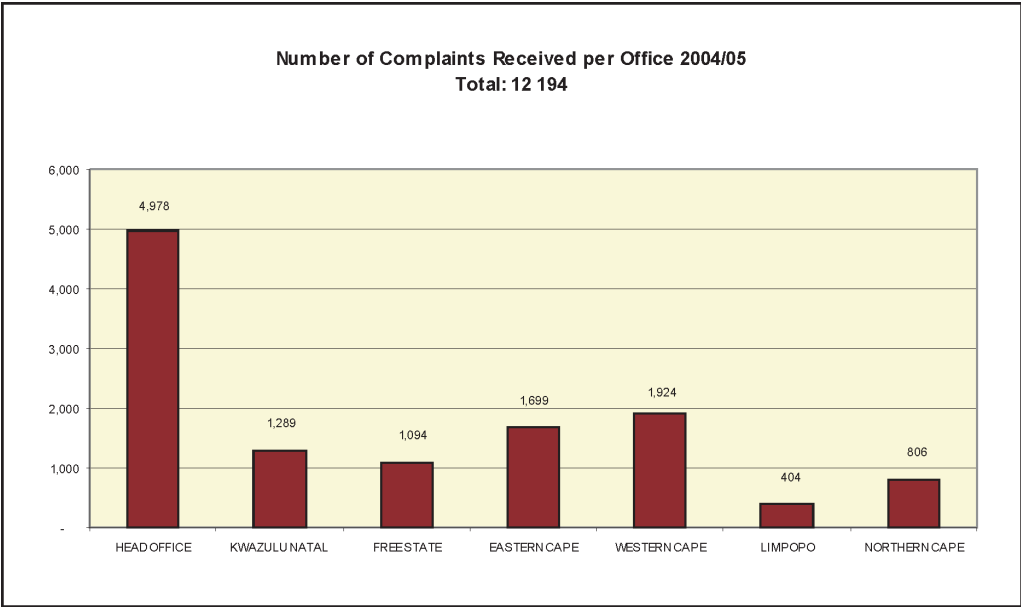
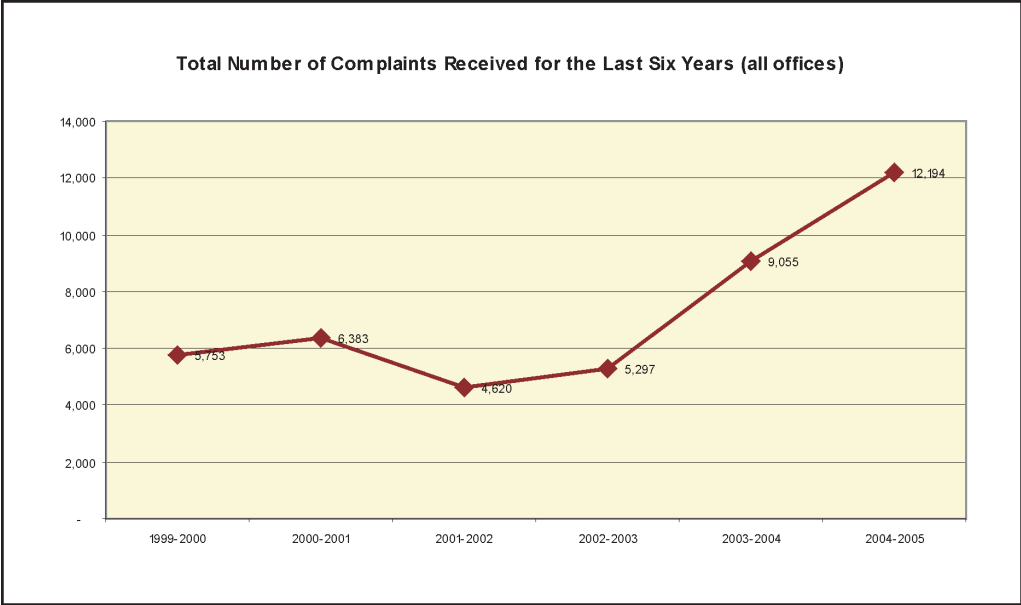
- The Commission considered the question of the constitutionality of the use of boom gates and road closures.
- Submissions by oral presentations were all subjected to scrutiny and questions asked by the audience. An outline of the purpose and conditions under which boom gates and road closures are authorised were also tested against the constitutionality provisions.

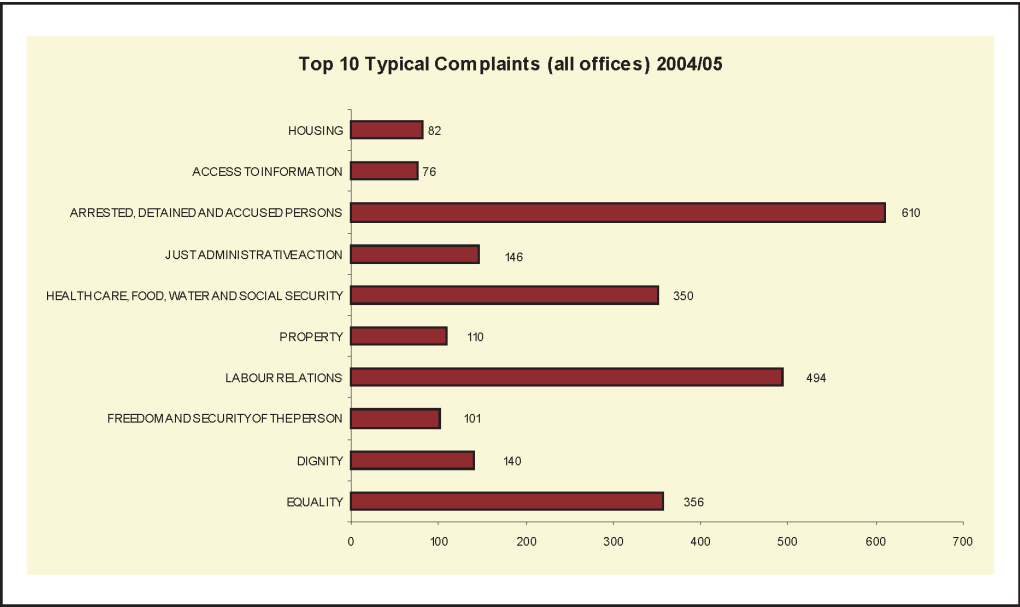
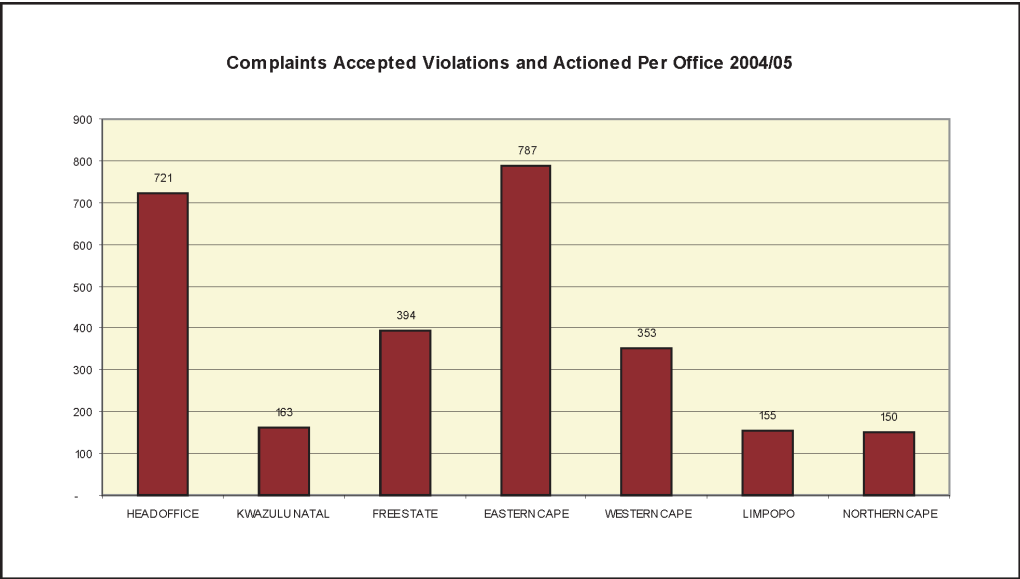
Additional Activities – There is ongoing monitoring of holding institutions for non-nationals to ensure the observance of their human rights. Problems range from delays in the repatriation process; non-compliance with the Immigration Act and the Refugees Act; to conditions in the holding cells. Visits to Lindela Repatriation Centre are scheduled fortnightly, and feed into a monthly internal report. The Legal Officer who visits Lindela also offers advice to inmates and has established a good working relationship with the Lindela officials, hence some complaints are settled immediately. Relationships have also been established with other institutions engaged in the same matter, such as the Refugee Unit of Lawyers for Human Rights (LHR).

The Commission makes every effort to ensure that its various recommendations and the court orders that are secured are implemented. As a follow up to the enquiry on human rights violations conducted in the previous financial year the Commission has monitored the progress relating to the implementation of the recommendation. High level meetings have been held to map the way forward.



The Commission is acting on the *Vumazonke vs MEC for Social Department, Eastern Cape*, wherein the Commission was asked to consider possible violations of human rights by the Eastern Cape Department of Social Development in its non-compliance with numerous court judgments relating to social grants.







Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Complaints handled	Timely screening of complaints received Timely finalisation of complaints	Increase number of complaints handled by 20-30% per annum over the MTEF period To successfully investigate, mediate and conclude at least 50% of complaints received within 90 days of receipt	Resolve 125 Complaints within 12 months	205 complaints resolved
Litigation	Develop jurisprudence and ensure observance of the Constitution	Increase in number of successfully litigated cases	5 cases per year	6 cases were litigated
Court Inspection	Function moved to Research and Documentation	Function moved to Research and Documentation	Function moved to Research and Documentation	Function moved to Research and Documentation Department
Hearings and Inquiries	Identify and address systemic human rights violations	Indigenous Peoples Rights Health Sexual Abuse Non-nationals	2 Inquiries every 6 months	3 inquiries conducted

Service Delivery Achievements
Programme 5: Legal Services

Section 2: Programme Performance

Programme 6: Research and Documentation

Purpose: To monitor the observance of human rights in South Africa, through research and documentation

Measurable Objectives:

- To monitor and assess the observance of economic and social rights
- To monitor and assess the observance of human rights, including the right to equality and the right to information
- To maintain a leading human rights library and documentation centre

Service Delivery Objectives and Indicators

Recent Outputs

Socio-economic Rights Reports, Protocols and Workshops – It has taken several years of work to build the Commission's socio-economic rights monitoring process and to employ skilled and committed researchers with a better understanding of human rights. Collective wisdom gained over the years, and more recently, additional resources have enabled researchers to combine rigid (and largely quantitative) requests for information from organs of state with a qualitative understanding of the difficult realities of socio-economic rights implementation.

The new-look Fifth Economic and Social Rights Report for the 2002/03 financial year, in pursuance of section 184(3) of the Constitution was launched in Johannesburg on 21 June 2004. In August, 1 425 copies were distributed as follows:

Partner	Number
Parliament	750
Chapter Nine Institutions	10
National Government	90
Provincial Government	100
Others	30
International Organisations/Donor Community	10
Organised Labour	10
Universities	45
Public Libraries	45
Organised business/Civil Society/NGOs	70
Constitutional Court	15
SAHRC workshops, meetings and Omnibus	
Training Programme	250

To compile the Economic and Social Rights Report for the 2003/04 financial year, revised protocols were sent to National and Provincial Government as well as Parastatals in mid-August, for reply by 15 October 2004. The protocols were revised to improve reporting. The response rate by December 2004 was 39 out of 85 (46%), which is an improvement from the previous year.

A sample of 31 municipal councils were also requested to provide the Commission with existing documents (developed as part of their Integrated Development Plans) in order for the Commission to assess progress in the realisation of economic and social rights at local level.



In September 2004, the Economic and Social Rights Unit conducted a pilot field study in the Local Municipality of Madibeng (North West Province) in order to extend its research work to the local sphere. The Unit hosted a workshop on approaches to the monitoring of economic and social rights at local government level. A list of 30 other municipalities were selected as possible field sites on the basis of national poverty indicators and qualitative information from the Commission's Provincial Offices.

By the end of the financial year, the Unit had conducted field research in the North West, Eastern Cape and KwaZulu-Natal provinces. The fieldwork was aimed at providing a more up-to-date assessment of the progress made by the three spheres of government and community members in the realisation of socio-economic rights.

Equality – This sub-programme aims to advance the attainment of equality and is the focal point for the discharge of the Commission's legislative mandate in terms of PEPUA. The Equality Committee, including representatives from all Commission structures, provides advice and direction to the activities related to the right to equality.

The Equality Unit monitors Equality Courts and makes inputs on legislative development and reform. A National Equality Indaba was held on 24 and 25 June which assessed progress made in the realisation of equality over the last decade, the development of equality jurisprudence and the effectiveness of Equality Courts.

In order to ensure timeous delivery of the annual report on equality, the Commission has already begun the research and planning process. A monitoring instrument or protocol has been drafted, which will be employed to solicit information in terms of section 24 of the Act in relation to progress made to promote equality and to eliminate unfair discrimination. A workshop on the development of an equality monitoring system on 11 November 2004 brought together key experts in the field.

Access to Information – Recommendations for reform of PAIA and its Regulations were sent to the Department of Justice and Constitutional Development and Parliament. A detailed report on the state of the right to access to information, as required by PAIA, is contained in Annexure A.

Development and Maintenance of Library – The Library and Documentation Centre provides a core support function to the Commission and the general public. It provides an information service at the cutting edge of human rights developments, which informs the strategies of the Commission. All material is catalogued and managed using library software applications. The library acquired the following material during the 2004/05 financial year:

Material	Quantity
Journals	186
Books	National Office 47 purchased 180 donated Provinces 28 purchased 25 titles on back order



Material	Quantity
Law Reports	200
CD ROMs	19
Loose leaf updates	117
Reports/Annual Reports government departments	139 Reports/annual reports mainly from
Newspapers	The library subscribes to 3 daily newspapers and 4 weekend newspapers and 1 online legal brief
Magazines/Newsletters	220 were received as part of subscriptions to journals
Government Gazettes	Weekly as published by Government Printers
SAHRC Publications	17





Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Socio-economic rights reports, protocols and workshops	To monitor and assess the observance of economic and social rights	Production of 5th ESR report	Printing June 2004 and distribution 90% complete by October 2004	ESR Report launched on 21 June 2004 1 425 copies distributed by August 2004
		Refine the economic and social rights monitoring process in terms of section 184(1) and (3) of the Constitution	National and provincial protocols complete - August 2004; local government by October 2004	Sixth Economic and Social Rights Report protocols revised and sent out in mid-August; Studies of municipalities undertaken
		Build capacity for members of civil society and government officials by conducting 9 provincial workshops	4 workshops by December 2004	One workshop was held in September 2004 in Lethabale (North West Province) on <i>Gender and Human Rights</i> ; research meetings, interviews and site visits replaced workshops in the North West, Eastern Cape and KwaZulu-Natal
		9 workshops and seminars on economic and social rights	5 workshops by March 2005(January - March 2005)	One seminar was held in Johannesburg in September 2004 on Approaches to Monitoring and Assessing the Realisation of Economic and Social Rights: What Role for Indigence Policies?

Service Delivery Achievements
Programme 6: Research and Documentation

Section 2: Programme Performance

Section 2: Programme Performance

Service Delivery Achievements
Programme 6: Research and Documentation



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Equality	To monitor and assess the observance and enjoyment of the right to equality	Equality monitoring system Production of annual report to Parliament Recommendations on law reform	Setup by December 2004 Dependent on Promulgation of Regulations in terms of the Equality Act	Draft in place Depends on promulgation of Regulations Recommendations made on Judicial Laws Amendments Bill and Education Laws Amendments Bill
			Ongoing 2 by December 2004, 3 by March 2005	Pretoria Central, North-Brits-Bafokeng and Molopo Equality Courts monitored Cultural Initiation Schools seminar and workshop on the National Equality Barometer held
			June 2004	An Equality Indaba held in June 2004



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Access to information	To monitor and assess the observance and enjoyment of the right of access to information	Production of annual report to Parliament including recommendations on law and other reform Revision of Commission's section 14 manual Production of section 10 Guide 9 workshops or seminars	Printing June 2004 and submission to Parliament	The report was printed as an annexure to the Commission's annual report Achieved
			15 February 2004 2 per quarter	Guide launch March 2005 22 July 2004 training for Kruger National Park Staff; 18 June 2004 lecture to the Gauteng Department of Health Staff and CEOs of Hospitals; 15 June 2004 in-house briefing; Presentation to Boksburg Chamber of Commerce
Development and maintenance of library	Resource for human rights knowledge for the Commission and the public	Acquisition and maintenance of human rights materials in terms of subscription contracts and providing quarterly reports on new acquisitions	Quarterly	Material acquired according to budget and subscriptions Quarterly reports submitted

Programme 7: Education and Training

Purpose: To promote human rights through education and training, public awareness, materials development and the institutionalisation of human rights education.

Measurable Objectives:

- To conduct training, workshops, seminars, presentations and capacity building programmes on equality, economic and social rights, promotion of access to information, farming communities and the Commission's focus areas and respond to requests for training from organisations and communities
- To provide in-house capacity building for the Commission on the equality legislation, access to information and general human rights themes and training methodology
- To ensure the institutionalisation of Human Rights Education and provide for system of quality assuring the education and training programmes of the SAHRC
- To implement human rights education projects in line with the strategic objectives of the Commission, nationally and regionally
- To conduct community outreach and awareness programmes
- To develop appropriate human rights educative and training materials

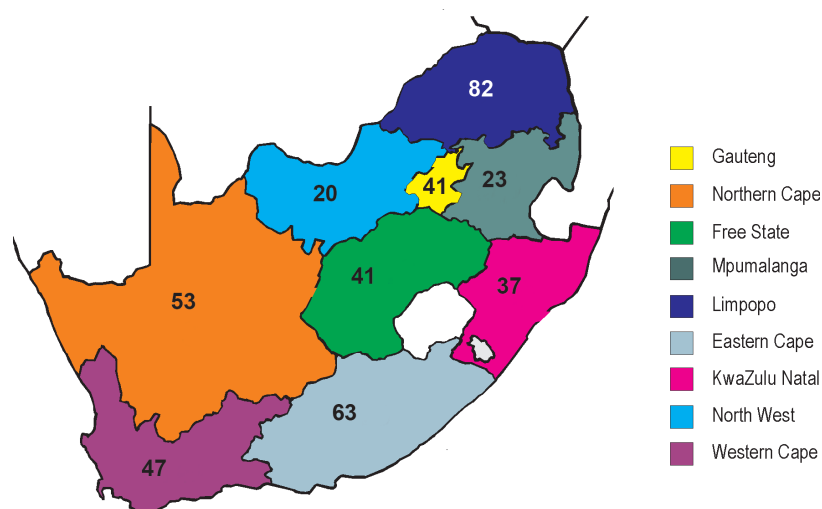
Service Delivery Objectives and Indicators

Recent Outputs

Training Programmes and Workshops – The total number of educational interventions (workshops, training programmes, seminars, presentations) conducted under all the programmes in the period under review was 413 and 29 298 people were reached through these activities. This amounts to an average of 34 interventions per month and exceeds the service delivery indicators and targets of the Commission across all programmes.

Total Educational Interventions per Province

Total: 407



A notable achievement was the delivery of workshops in the SADC on Human Rights, Democracy and Worker Union Rights as part of the Commission's regional collaboration to build human rights.

Public Education and Community Outreach – These activities of the Commission focus on poverty-stricken communities in rural and peri-urban areas, as well as areas where poverty indicators suggest communities are particularly impoverished.

The Omnibus continues to be deployed to enable successful community outreach. It encompasses a large range of educational interventions ranging from workshops, seminars, presentations, site visits and walkabouts to widespread campaigns, events and advocacy initiatives. The Omnibus targets all actors in communities, from community members, to local government, government departments, academic institutions, the private sector, traditional leaders, community and faith-based organisations, trade union branch offices, NGOs and societies and groups (such as burial societies, stokvels and youth groups).

In the period under review a total of 15 Omnibus interventions were conducted. There were a total of 260 rural educational interventions, including those from provincial offices, reaching 21 437 people. This amounts to an average of 22 interventions per month in rural areas.

Public outreach activities in 2004/05 included a special focus on the Northern Cape Province. The Commission has begun to reach into the most remote areas of this geographically vast province, where communities have limited access to infrastructure and resources and are subjected to complex socio-cultural challenges.

The annual Human Rights Week programme, built around Human Rights Day on 21 March, also focused on the Northern Cape and included more than 15 workshops as well as visits to institutions and communities. Human Rights Week 2005 activities were conducted in the district of Namakwa. Three municipalities in the Namakwa district were targeted (Nama Khoi, Khâ-lma and Richtersveld) for community outreach and public education. Human Rights Day was celebrated in Concordia, outside the town of Springbok, Nama Khoi municipality, Namakwa. The theme was the right to basic education, with a focus on schools as centres for the upliftment for youth and the community in general. The event focused on the Namakwa Youth Voices Forum (Namakwa Jeug Stemme Forum) during which youth from the three municipalities in Namakwa spoke out on issues related to their experience of the right to education, and its central role in accessing other rights.

The themes and target groups for all educational interventions are reflected in the table below:

Themes	Total number of interventions
Equality	47
The Elderly	11
People with Disabilities	13
Human Rights and the SAHRC	186
Children	31



Themes	Total number of interventions
Human Rights Education	23
Economic and Social Rights	28
Multithematic Intervention	15
Access to Information	25
Gender	20
HIV/Aids	5
Other	9

Target Groups

- Public Officials
- The Elderly
- Private Sector
- Youth/ Learners
- Women
- Communities/ Rural Areas
- Civil Society
- People with Disabilities
- Judiciary
- Traditional Leaders
- Educators/ School Governing Bodies
- Children/ Youth

Institutionalisation of Human Rights Education

- The Commission played an important role in the development of the National Curriculum Statements for Grades R to 9 and Grades 10 to 12, ensuring the inclusion of human rights in both these National Education Policy Documents.
- The Commission is part of the Standards Generating Body (SGB) on Human Rights, Democracy and Peace Education, developing unit standards for registration on the National Qualifications Framework (NQF).
- The Commission taught at five institutions of higher learning, and for the Advanced Certificate in Education on Values and Human Rights.
- The Commission continues to act in an advisory capacity with regard to the institutionalisation of human rights in learning programmes, and to engage in educational research.
- The Commission participated in four conferences on human rights education, at national, regional and international level. Of note was the participation in an international working group convened by the OHCHR and UNESCO to develop a draft plan of action for the first phase (2005 to 2007) of the World Programme of Action for Human Rights Education.

The Commission also participated in compiling a Report on Human Rights and Democracy Education in the SADC Region, a project spearheaded by the Electoral Institute of Southern Africa.



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Seminars, omnibus outreach, training programmes, workshops, public education initiatives and educative leaflets and materials	Education, training and public outreach	120 interventions: • Economic and social rights • Equality • Access to information • SAHRC and human rights	10 interventions per month	Total interventions across Commission programmes: 413 Total interventions by the Education and Training Department: 110
Training materials and equipment	Materials, equipment and course development	4 sets of material based on focus areas	1 set per quarter	Manual on Equality; manual on Human Rights, Democracy and Worker Rights; training materials and resources developed as per workshop requirements; training equipment acquired
Institutionalisation of human rights education	Ensure the institutionalisation of human rights education	Convening Forum on DHRE (twice a year/coordination and networking) Curriculum and NQF project SAQA representation and coordination (SGB for Peace, Human Rights and Democracy Education) – once a semester for coordination/quarterly NSB and SGB workshops	FDHRE/ November Curriculum/ Ongoing NSB/ ongoing SGB/ ongoing	Meetings of Forum on DHRE are ongoing Curriculum and NQF project is ongoing SGB reached the end of its initial two year term in February 2005; its tenure was extended to February 2006
Human Rights Week	Conduct community outreach and awareness programmes	7 day intense community outreach programme; increase of 20% in outreach from previous year	21-15 March 2005	Completed and report with recommendations compiled



Programme 8: Provincial Offices

Purpose: To ensure efficient and effective implementation of the Commission's programmes and policies at provincial and local level and to enhance the accessibility of human rights services.

Measurable Objectives:

- To enhance the accessibility of human rights services to ordinary people at a local level
- To promote human rights and create awareness among all stakeholders
- To investigate individual and systemic complaints of human rights violations at the point of occurrence and to provide appropriate redress

Service Delivery Objectives and Indicators

Recent Outputs

Free State –The bulk of the complaints dealt with come from the farming communities and mainly focused on living and working conditions.

To build public awareness of human rights, the office regularly gives interviews on Lesedi FM and community radio stations such as Naledi and Radio Qwaqwa. Public awareness campaigns are undertaken in collaboration with other Chapter Nine Institutions, such as the Office of the Public Protector (OPP), Independent Electoral Commission (IEC) and the Commission on Gender Equality (CGE). There was also collaboration with other statutory bodies, as well as government departments, civil society and organised structures within the further and higher education sector.

KwaZulu-Natal –The provincial office has worked closely with a number of government departments, including the human rights component within the Office of the Premier and Traditional Leaders. The Provincial office intervened in the Town Hill Hospital, Pietermaritzburg, where a delegation from the Commission assessed the hospital and submitted a report to the Task Team set up by the Department of Health to investigate allegations of abuse, misconduct and neglect.

The provincial office also conducted a number of mediations, including a complaint regarding the Muslim call to prayer, in which the help of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL) was enlisted.

Limpopo Province – The Provincial Office subpoenaed the MEC for Housing and Local Government with regard to the eviction of some residences in Lebowakgomo. The subpoena led to a public hearing, which determined that the Department of Housing would build houses for this community. The Department has subsequently provided for the Lepelle Nkumpi Municipality to construct 200 houses for the evicted families.

The office held two mediation hearings. One of them related to racist remarks uttered by a public official. The result of mediation was a letter of apology. The letter of mediation involved expropriation by the Department of Land Affairs. The outcome of the mediation was a commitment to compensate the complainant.



The office undertook a Prisoners Project, which focused on juvenile prisoners and prisoners with disabilities. Prison visits were conducted and prisoners were interviewed in Limpopo and Mpumalanga provinces.

Workshops, seminars, omnibus training and presentations were held during the year with different stakeholders, including municipalities, communities, schools, traditional leaders and NGOs. The Workshop covered the following areas: PEPUDA, socio-economic rights, the SAHRC in general, PAIA, alternatives to corporal punishment, Xenophobia, language and cultural rights, and HIV/Aids and the law.

The office celebrated Human Rights Day in Bohlabela District, thus promoting human rights in the most rural area of the province. A road show was held in partnership with the Pan South African Language Board (PANSALB) in the Polokwane area.

Mpumalanga – The Mpumalanga Office has only been operational since March 2005, but has already received a number of complaints, particularly on the issue of equality, and is in the process of lodging its first case with the Equality Courts. A number of workshops were conducted to create public awareness.

Eastern Cape – This provincial office has attained accreditation as a law clinic. The Provincial Office has successfully represented a number of complainants. It has also been involved in the follow-up on some of the issues raised in the judgement by Judge Clive Plasket in the matter of *Vumazonke vs MEC for Social Development*.

On Human Rights Day a joint event was held in the Intsika Yethu Municipality in collaboration with other Chapter Nine institutions. This municipality was identified because of its rural nature and the need to extend the services of Chapter Nine Institutions to the area. The support by both the municipality and traditional leaders for the event was overwhelming. Joint education and training workshops followed from 22 to 24 March 2005.

The Office has conducted education and training interventions in the following areas: the rights of older persons, domestic violence, child rights, prisoner rights, disability, health care and PEPUDA. There were also several interviews on radio Umhlobo Wenene, which reaches approximately two million people, and Khanya Community radio.

Northern Cape – In its short existence, the office has developed a good working relationship with provincial and local government, other Chapter Nine Institutions, statutory bodies and communities. The office participated in meetings and information dissemination sessions with government, NGOs and CBOs. Public awareness of human rights has also been increased by means of site visits, sometimes coupled with presentations, at farm schools, hospitals, prisons and places of safety. Most of the complaints received concern labour matters, reflecting the inequities in the province. Thus far the office has successfully resolved complaints through mediation.

The office also participated in the Khomani San Inquiry in October 2004 and the Human Rights Week in March 2005 which was the Commission's National focus for Human Rights Week.



Western Cape – The Western Cape Office has seen a significant growth in complaints received as well as in the demand for educational interventions. Typical cases concern equality, education, prisoners' complaints, and labour matters.

The legal section of the office educated people about human rights by actively participating in community education initiatives, especially in rural areas such as Montague and Robertson, frequent radio talk shows, and litigating a few high profile cases.

Training programmes and workshops have been developed and conducted for various beneficiary groups on certain key human rights themes. Extensive networking and training for the health sector, schools and communities has had the effect of disseminating knowledge about the Bill of Rights, the right to equality, economic and social rights and PAIA.

Frequent participation in radio talk shows, exposure in media reports and participation in community workshops and meetings at carefully chosen and strategic community locations around the Western Cape, such as Plettenberg Bay, Grabouw and Vredendal, has resulted in impact in these places, but there remains the need to devote resources to increase public awareness in the broader Western Cape, particularly in rural areas.

Parliamentary Liaison – This sub-programme aims to promote and protect human rights through legislation monitoring; intervening in the legislative process where necessary; raising awareness and stimulating debate through workshops, seminars and public awareness initiatives on legislative matters; and effectively liaising with Parliament. The Parliamentary Liaison Unit falls within the Research and Documentation programme, but is physically housed in the Western Cape office to enable access to Parliament.

The Parliamentary Unit has participated in the Children's Bill parliamentary process, made various submissions on education laws and policies dealing with discipline in schools and the exemption of payment of school fees for the poor, and hosted a seminar highlighting rights issues at stake in surgery to assign sex to intersex infants. The Commission participated in the Land and Agricultural Affairs Portfolio Committee Public Hearings on the Pace of Land Reform in South Africa.

A particular focus area has been the Older Persons' Bill. Workshops were conducted in all nine provinces to elicit comments and inputs from relevant role-players. There were also three in-depth workshops held with experts to advise role-players on specific aspects of the Bill, such as the remedies that are available outside of the Bill to address elder abuse; and a comparison with children's legislation in terms of how the State deals with different groups of persons in need of care and protection. Arising out of this process has been a request for the Commission to coordinate and facilitate the establishment of a National Forum on Ageing, in order to ensure that this sector is more effectively positioned to access their rights.

The Section 5 Committee on Parliamentary and Government Liaison, which consists of relevant experts who advise the Commission on legislative matters, met once during the year. This can be attributed to the 2004 general elections and the start of the new parliament, which led to a lull in legislative activity.



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
Complaints handled	Timely screening of complaints received Timely finalisation of complaints	Recommending at least 2 cases for litigation to the Complaints Committee in terms of set criteria and strategic focus areas of Commission Successfully resolving at least 50% of complaints received within 90 days of receipt Audit of old (unresolved) cases pertaining to previous financial year	Once per year By 30 April 2004	Partially Achieved Achieved
Training programmes, workshops, information sessions and seminars Responding to requests for training	Education, training and public outreach	One 2-day workshop per province per month on focus areas One 1-day workshop per province per month on request Two education and training interventions	Once per month	Achieved
			Once per month	
Public awareness programmes	Conduct community outreach and awareness programmes	Effective synergy with national projects and targets		Achieved
Parliamentary Liaison	Legislative monitoring and interventions in the legislative process, parliamentary liaison and awareness-raising around legislative matters	Submissions on proposed legislation Research/monitoring projects Internal Parliamentary Update Reports Internal Memo's on legislative developments Attend Parliamentary Committee meetings Attend civil society functions	4	8 submissions on proposed legislation
			2	2 research/monitoring projects
			Quarterly	Quarterly internal Parliamentary Update Reports
			10	14 Internal Memo's on legislative developments
			20	Attended 28 Parliamentary Committee meetings
			30	Attended 47 civil society functions

Service Delivery Achievements
Programme 8: Provinces

Section 2: Programme Performance



Section 2: Programme Performance

Service Delivery Achievements
Programme 8: Provinces



Sub-programmes	Output	Output performance measures/service delivery indicators	Actual performance against target	
			Target	Actual
		Workshops/Seminars Coordinated - Section 5 Parliamentary and Government Liaison Committee Meetings	5 2	9 Workshops /Seminars held Coordinated 1 Section 5 Parliamentary and Government Liaison Meetings

SECTION 3: HUMAN RESOURCES MANAGEMENT

Table 1.1 - Personnel costs by programme

Programme	Total Expenditure	Personnel Expenditure	Administrative Expenditure	Professional and Special Services	Personnel cost as % of total expenditure	Average personnel cost per employee
Commission	3,141	2,752	66	232	88%	393
Management	18,612	4,361	2,963	4,433	23%	218
Advocacy						
Legal	2,033	1,960	39	112	96%	218
Research	5,041	4,761	277	1,142	94%	265
Training	3,505	2,585	82	1,082	74%	215
Provinces	6,496	4,827	302	1,492	74%	193
Total	38,828	21,246	3,729	8,493	55%	233

Table 1.2 - Personnel costs by salary band

Salary Levels	Personnel expenditure	Average personnel cost per employee
Salary level 1-2	1,539	192
Salary level 3-5	324	54
Salary level 6-8	3,947	110
Salary level 9-12	9,852	318
Senior Management	4,008	802
Commissioners	1,576	315
Total	21,246	233

Table 1.3 - Salaries, Overtime, Home Owners Allowance and Medical Assistance

Programme	Overtime amount	% of personnel cost	Allowances amount	% of personnel cost
Commission			508	18.03%
Management			485	8.04%
Advocacy				
Legal			164	8.73%
Research			252	6.97%
Training			191	8.22%
Provinces			209	4.57%
Total	-	-	1,809	8.51%



Table 1.4 - Salaries, Overtime, Home Owners Allowance and Medical Assistance by salary band

Salary levels	Overtime amount	% of personnel cost	Allowances amount	% of personnel cost
Salary level 1-2			40	2.60%
Salary level 3-5			30	9.26%
Salary level 6-8			185	4.69%
Salary level 9-12			380	3.86%
Senior Management			848	21.16%
Commissioners			326	20.69%
Total	-	-	1,809	8.51%

TABLE 1.5 - Employment and vacancies by programme, 31 March 2005

Programme	Number of vacant posts	Number of posts filled	Total number of posts	Vacancy rate	Number of posts filled additional to the establishment
Commission	0	8	8	0%	0
Management	4	23	27	15%	0
Advocacy	0	0	0	0%	0
Legal Services	4	10	14	29%	0
Research and Documentation	3	23	26	12%	0
Education and Training	1	9	10	10%	0
Provinces	2	33	35	6%	0
Total	14	106	120	12%	0



TABLE 1.6 - Employment and vacancies by salary band

Salary band	Number of vacant posts	Number of posts filled	Total number of posts	Vacancy Rate	Number of posts filled additional to the establishment
Lower skilled (Levels 1-2)	0	10	10	0%	0
Skilled (Levels 3-5)	1	4	5	20%	0
Highly skilled production (Levels 6-8)	5	31	36	14%	0
Highly skilled supervision (Levels 9-12)	7	51	58	12%	0
Senior Management (Levels 13-16)	1	10	11	9%	0
Total	14	106	120	12%	0

TABLE 1.7 - Annual turnover rates by salary band for the period 1 April 2004 to 31 March 2005

Salary band	Number of employees per band as on 1 April 2004	Appointments and transfers into the department	Terminations and transfers out of the department	Permanent employees	Turnover rate
Lower skilled (Levels 1-2)	9	1	0	10	0%
Skilled (Levels 3-5)	6	4	6	4	150%
Highly skilled production (Levels 6-8)	40	9	19	30	63%
Highly skilled supervision (Levels 9-12)	29	31	9	51	18%
Senior Management Service B and A	11	3	3	8	27%
Senior Management Service B and B	0	0	0	1	0%
Senior Management Service B and C	0	0	0	2	0%
Senior Management Service B and D	0	0	0	0	0%
Total	95	47	31	106	29%



TABLE 1.8 - Reasons why staff are leaving the Commission

Termination Type	Number	% of total
Death	0	0%
Resignation	14	88%
Expiry of contract	2	0%
Dismissal - operational changes		
Dismissal - misconduct		
Dismissal - inefficiency		
Discharged due to ill-health	0	0%
Retirement	0	0%
Transfers to other Public Service Departments	0	0%
Other	0	0%
Total	16	88%
Total number of employees who left as a % of the total employment		15%

TABLE 1.9 - Recruitment for the period 1 April 2004 to 31 March 2005

Occupational bands	Male				Female			
	African	Coloured	Indian	White	African	Coloured	Indian	White
Top management	0	0	0	0	0	0	0	0
Senior Management	2	0	0	1	0	0	0	0
Professionally qualified and experienced specialists and mid-management	4	0	0	0	4	1	0	2
Skilled technical and academically qualified workers, junior management, supervisors, foreman and superintendents	4	0	1	0	8	0	0	1
Semi skilled and discretionary decision making	6	0	0	0	1	0	0	0
Unskilled and defined decision making	2	0	0	0	0	0	0	0
Total	18		1	1	13	1		3
Employees with disabilities								



TABLE 1.10 - Promotions for the period 1 April 2004 to 31 March 2005

Occupational bands	Male			Female		
	African Coloured	Indian	White	African Coloured	Indian	White
Top management						
Senior Management						
Professionally qualified and experienced specialists and mid-management						
Skilled technical and academically qualified workers, junior management, supervisors, foreman and superintendents				1		
Semi skilled and discretionary decision making						
Unskilled and defined decision making						
Total				1		

Employees with disabilities

TABLE 1.11 - Terminations for the period 1 April 2004 to 31 March 2005

Occupational bands	Male			Female		
	African Coloured	Indian	White	African Coloured	Indian	White
Top management	0	0	0	0	0	0
Senior Management	1	0	2	0		
Professionally qualified and experienced specialists and mid-management	1	0	0	2	0	0
Skilled technical and academically qualified workers, junior management, supervisors, foreman and superintendents	5	0	0	3	0	0
Semi skilled and discretionary decision making	0	0	0	2	0	0
Unskilled and defined decision making	0	0	0	0	0	0
Total	7	0	2	7	0	0
Employees with disabilities	0	0	0	0	0	0



TABLE 1.12 - Performance Rewards by salary band for personnel below Senior Management Service, 1 April 2004 to 31 March 2005

Salary bands	Beneficiary Profile			Cost		
	Number of beneficiaries	Total number of employees in group	% of total within salary bands	Cost (R'000)	Average cost per employee	Total cost as a % of the total personnel expenditure
Lower skilled (Levels 1-2)	6	10	60%	1	0	0%
Skilled (Levels 3-5)	2	5	40%	1	0	0%
Highly skilled production (Levels 6-8)	17	33	52%	21	1	0%
Highly skilled supervision (Level 9-12)	9	47	19%	13	1	0%
Senior Management	5	6	83%	29	6	0%
Commissioners		5	0%			0%
Total	39	106	37%	65	2	0%

TABLE 1.13 - Sick leave, 1 April 2004 to 31 March 2005

Salary bands	Total days	% days with medical certification	Number of employees using sick leave	% of total employees using sick leave	Average days per employee	Estimated cost (R'000)
Lower skilled (Levels 1-2)	44	10	6	60%	7	1
Skilled (Levels 3-5)	12	5	4	100%	3	1
Highly skilled production (Levels 6-8)	122	35	20	67%	6	8
Highly skilled supervision (Levels 9-12)	70	54	13	25%	5	10
Senior Management (Levels 13-16)	7	6	2	18%	4	3
Commissioners	3	5	2	18%	2	3
Total	258	115	47	44%	5	26



TABLE 1.14 - Annual leave, 1 April 2004 to 31 March 2005

Salary bands	Total days taken	Number of employees	Average per employee
Lower skilled (Levels 1-2)	200	10	20
Skilled (Levels 3-5)	25	5	5
Highly skilled production (Levels 6-8)	800	33	24
Highly skilled supervision (Levels 9-12)	500	47	11
Senior Management (Levels 13-16)	50	6	8
Commissioners	80	5	16
Total	1,655	106	16



SECTION 4: AUDITED FINANCIAL STATEMENTS

for the year ended 31 March 2005

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REPORT OF THE AUDIT COMMITTEE for the year ended 31 March 2005

Our report for the financial year ended 31 March 2005 is set out below.

Audit Committee Members and Attendance:

During the Financial year ended 31 March 2005, the Audit Committee consisted of the members listed hereunder who meet a minimum of four times per annum in terms of the Audit Committee Charter. During the year under review five (5) meetings were held.

Names of Member	Number of Meetings Attended
Carin Strickett	5
Alan Mackenzie	2
Tshiamo Sedumedi	5
Lindiwe Mokate	5

Audit Committee Responsibility

The Audit Committee reports that it has complied with all its responsibilities arising from section 38 (1)(a) of the PFMA and Treasury Regulation 3.1.10. The Audit Committee also reports that it complied with the Audit Committee Charter.

The Effectiveness of Internal Control and the Internal Audit function

During the year under review the Audit Committee raised a few concerns particularly regarding the vacancies within the financial management unit within the SAHRC.

The SAHRC has actively been driving a process to ensure that the appropriate skills are obtained and appointed. Subsequent to the end of the Financial Year, the CFO position has been filled with a person from the Department of Justice and the two supporting positions in the financial management unit are being finalised.

The internal audit function has been outsourced to SAB&T and with the steps that have been taken in terms of the financial management capacity and internal audit appointment, the Audit Committee is confident that historical concerns have now been addressed.

Evaluation of Financial Statements

The Audit Committee has:

- Reviewed, suggested amendments where appropriate and discussed with the Auditor-General and the Accounting Officer the audited annual financial statements to be included in the annual report;



**REPORT OF THE AUDIT COMMITTEE
for the year ended 31 March 2005**

- Reviewed the Auditor-General's management letter and the management response thereto; and
- Reviewed all audit adjustments recommended and effected;

The Audit Committee accepts the conclusion of the Auditor-General on the Annual Financial Statements and is of the opinion that the audited Annual Financial Statements be accepted and read together with the report of the Auditor-General.



Carin Strickett
Chairperson of the Audit Committee
9 September 2005



MANAGEMENT APPROVAL OF FINANCIAL STATEMENTS for the year ended 31 March 2005

The financial statements of the South African Human Rights Commission are the responsibility of the Accounting Officer of the Commission, which she fulfils primarily by establishing and maintaining accounting systems and practices that are adequately supported by systems of internal control. Such controls provide assurance that the assets of the Commission are safeguarded, transactions are executed in accordance with the Commission's policies and procedures and the financial records are reliable.



Narandran Kollapen
Chairperson



Lindiwe Mokate
Chief Executive Officer



**REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE
FINANCIAL STATEMENTS OF THE SOUTH AFRICAN HUMAN
RIGHTS COMMISSION (SAHRC)
FOR THE YEAR ENDED 31 MARCH 2005**

1. AUDIT ASSIGNMENT

The financial statements as set out on pages 67 to 84, for the year ended 31 March 2005, have been audited in terms of section 188 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), read with sections 4 and 20 of the Public Audit Act, 2004 (Act No. 25 of 2004) and section 16(2) of the South African Human Rights Commission Act, 1994 (Act No. 54 of 1994). These financial statements, the maintenance of effective control measures and compliance with relevant laws and regulations are the responsibility of the accounting officer. My responsibility is to express an opinion on these financial statements, based on the audit.

2. NATURE AND SCOPE

The audit was conducted in accordance with Statements of South African Auditing Standards. Those standards require that I plan and perform the audit to obtain reasonable assurance that the financial statements are free of material misstatement.

An audit includes:

- examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements,
- assessing the accounting principles used and significant estimates made by management, and
- evaluating the overall financial statement presentation.

Furthermore, an audit includes an examination, on a test basis, of evidence supporting compliance in all material respects with the relevant laws and regulations which came to my attention and are applicable to financial matters.

The audit was completed in accordance with Auditor-General Directive No. 1 of 2005.

I believe that the audit provides a reasonable basis for my opinion.

3. AUDIT OPINION

In my opinion, the financial statements fairly present, in all material respects, the financial position of the South African Human Rights Commission at 31 March 2005 and the results of its operations and cash flows for the year then ended, accordance with South African Statements of Generally Accepted Accounting Practice and in the manner required by the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended.



**REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE
FINANCIAL STATEMENTS OF THE SOUTH AFRICAN HUMAN
RIGHTS COMMISSION (SAHRC)
FOR THE YEAR ENDED 31 MARCH 2005**

4. EMPHASIS OF MATTER

Without qualifying the audit opinion expressed above, attention is drawn to the following matters:

4.1 PROPERTY, PLANT AND EQUIPMENT

Section 38(1) (d) of the PFMA, prescribes that the accounting officer is responsible for the management, including safeguarding and maintenance of assets, and for the management of the liabilities.

The following weaknesses were identified:

- (a) Proper control over the movement of assets did not exist;
- (b) Incorrect purchase dates of fixed assets were recorded in the fixed asset register;
- (c) Certain assets were not recorded individually on the asset register;
- (d) Certain assets were recorded more than once with the same bar-code;
- (e) The capitalised library material amounting to R1 463 938 was not recorded in the fixed assets register;
- (f) The values of certain assets were not recorded in the fixed asset register; and
- (g) Certain assets could not be traced to the fixed assets register.

4.2 CASH AND BANK

Significant control weaknesses were identified:

- (a) Monthly bank reconciliations were incorrectly performed; and
- (b) Reconciling items were not followed up in a timely manner.

4.3 PAYABLES

Creditor's reconciliations were not performed at the South African Human Rights Commission.

4.4 PAYROLL

The following weaknesses were identified with regard to the payroll:

4.4.1 Leave register

Evidence could not be found that the leave register was reviewed by a senior official.

4.4.2 Unemployment Insurance Fund contribution (UIF) not deducted

Contrary to section 7 of the Unemployment Insurance Contributions Act, 2000 (Act No. 32 of 2000), the SAHRC did not deduct UIF contributions as required.



**REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE
FINANCIAL STATEMENTS OF THE SOUTH AFRICAN HUMAN
RIGHTS COMMISSION (SAHRC)
FOR THE YEAR ENDED 31 MARCH 2005**

4.4.3 Fringe benefit tax

Paragraphs 2(f) and 10A of the seventh Schedule of the Income Tax Act states that a taxable benefit accrues if a loan has been granted to an employee, whether by the employer or by any person by arrangement with the employer, or any associated institution in relation to the employer, and either no interest is payable or interest is payable by the employee at a rate less than the official rate of interest.

Upon review of selected payslips, audit identified that employees were not taxed on the fringe benefits received in the form of staff advances.

4.5 BUDGET

The approved budget was not correctly captured on the accounting system.

4.6 GOVERNANCE MATTERS

4.6.1 Documentation weaknesses

The following weaknesses were identified concerning expenditure:

- (a) Certain invoices were not stamped "paid" after payment was made;
- (b) Quotations were not obtained for certain transactions;
- (c) Payments were not made on original invoices;
- (d) Adequate documentary evidence of receipt of goods was not in place;
- (e) Certain internally generated invoices relating to travel expenditure were supported by purchase orders of one cent; and
- (f) Certain invoices pre-dated the order date.

Furthermore, the system batch processing used by the SAHRC did not facilitate a clear audit trail. This made it difficult to trace transactions through the accounting records of the SAHRC.

4.6.2 Risk management and internal audit

Section 38 (1) (a) of the PFMA requires the accounting officer to ensure that the institution has and maintains an effective and efficient and transparent system of financial and risk management and internal control.

As reported previously, the following matters of non-compliance were identified:

- (g) An adequate risk assessment was not performed by the SAHRC for the year under review;
- (h) The internal audit charter was only approved on 30 May 2005;
- (i) Internal audit did not submit reports in a timely manner to the audit committee and as such internal audit was not effective.



**REPORT OF THE AUDITOR-GENERAL TO PARLIAMENT ON THE
FINANCIAL STATEMENTS OF THE SOUTH AFRICAN HUMAN
RIGHTS COMMISSION (SAHRC)
FOR THE YEAR ENDED 31 MARCH 2005**

4.7 SUBMISSION OF FINANCIAL STATEMENTS

The financial statements of the SAHRC were submitted on 31 May 2005. Due to material shortcomings the annual financial statements were rectified and a final set was re-signed on 30 June 2005 and presented to audit.

4.8 LATE COMPLETION OF AUDIT

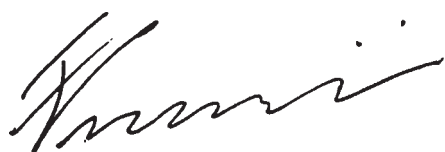
Section 40 of the Public Finance Management Act, 1999 (Act No. 1 of 1999) prescribes the accounting officer's reporting responsibilities, whilst section 40(2) requires that the Auditor-General must audit the annual financial statements and submit an audit report on those statements to the accounting officer within two months of the receipt of the statements.

The audit was only completed on 31 August 2005 due to the following:

- (a) Documentation was not submitted in a timely manner for audit purposes;
- (b) Financial statements were not submitted for audit in an appropriate manner and had to be adjusted after a high level review performed by the auditors;
- (c) Significant audit findings;
- (d) The start of the audit was delayed; and
- (e) The reliance on consultants to prepare the annual financial statements in the absence of a Chief Financial Officer.

5. APPRECIATION

The assistance rendered by the staff of the South African Human Rights Commission during the audit is sincerely appreciated.



I Vanker for Auditor-General

Johannesburg

31 August 2005



A U D I T O R - G E N E R A L



MANAGEMENT REPORT

for the year ended 31 March 2005

The Chief Executive Officer presents her report for the year ended 31 March 2005.

1. General Overview

1.1 The functions and powers of the South African Human Rights Commission (SAHRC) as contained in section 184 of the Constitution (Act No. 108 of 1996) are the following:

Functions:

- Promote the respect for human rights and a culture of human rights;
- Promote the protection, development and attainment of human rights; and
- Monitor and access the observance of human rights in the Republic.

Powers:

- To investigate and to report on the observance of human rights;
- To take steps to secure appropriate redress where human rights have been violated;
- To carry out research;
- To educate; and
- To require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realization of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.

1.2 Vision

The South African Human Rights Commission (SAHRC) seeks to be an effective instrument for the promotion and protection of human rights, to be the focal point for human rights practice in South Africa and to be accessible to all South Africans.

1.3 Mission Statement

The South African Human Rights Commission (SAHRC) is a national institution established to entrench constitutional democracy through the promotion and protection of human rights by:

- Addressing human rights violations and seeking effective redress;
- Monitoring and assessing the observance of human rights;
- Raising awareness of human rights issues;
- Education and training on human rights.

1.4 Key Objectives

To be an effective institution for the promotion and protection of human rights, the SAHRC will pursue the following primary objectives:

- To establish the SAHRC as a resource and a focal point for human rights in South Africa;
- To raise awareness of human rights and the role of the SAHRC;
- To investigate individual and systematic complaints of human rights violations and provide appropriate redress;



MANAGEMENT REPORT for the year ended 31 March 2005

- To provide a comprehensive research and documentation facility designed to advance human rights, through the monitoring and assessment of the observance of human rights, especially social and economic rights;
- To develop a sustainable culture of human rights through education and training; and
- To maintain and continue to implement an integrated human resource management strategy and system.

1.5 Programme and output details for the year ending 31 March 2005

The SAHRC will pursue the following objectives:

Programme 1: Strategic Management

- To ensure constitutional and legislative compliance within the operations of the Commission;
- To conduct strategic reviews in response to the internal and external environment;
- To guarantee the alignment of the Commission programmes with its strategic objectives and national priorities; and
- To manage effective accountability mechanisms.

Programme 2: Finance and Administration

- To provide efficient, effective and economical corporate services;
- To develop and implement financial, administrative and procurement systems in line with the PFMA and Treasury prescripts and regulations; and
- To maintain and develop high-level information and communications technology Systems.

Program 3: Commission

- To raise the profile of the SAHRC by engaging with various stakeholders including government and civil society on issues relating to human rights;
- To ensure strategic interventions on various human rights issues such as policy development;
- To contribute to the creation of a human rights body of knowledge; and
- To ensure the fulfillment of the SAHRC constitutional and statutory mandate.

Program 4: Media and Communication

- To establish a communication friendly environment within the Commission and with stakeholders/role-players;
- To promote human rights awareness by implementing an effective and efficient communication strategy; and
- To promote the work and corporate image of the Commission through public and media relations initiatives.

Programme 5: Legal Services

- To investigate the individual and systemic complaints of human rights violations; and
- To provide appropriate redress and resolve disputes regarding violations.



MANAGEMENT REPORT

for the year ended 31 March 2005

Programme 6: Research and Documentation

- To monitor and assess the observance of economic and social rights;
- To monitor and assess the observance of human rights, including the right to equality and the right to information;
- To maintain a leading human rights library and documentation center.

Programme 7: Education and Training

- To conduct training, workshops, seminars, presentations and capacity building programmes on equality, economic and social rights, promotion of access to information, farming communities and the SAHRC focus areas and responding to requests for training from organizations, communities;
- To provide in-house capacity building for the SAHRC on the equality legislation, access to information and general human rights training methodology;
- To ensure the institutionalization of human rights education and provide for system of quality assuring the education and training programmes of the SAHRC;
- To implement human rights education projects in line with the strategic objectives of the SAHRC, nationally and regionally;
- To conduct community outreach and awareness programmes;
- To develop appropriate human rights educative and training materials.

Programme 8: Provinces

- To enhance the accessibility of human rights services to ordinary people at a local level;
- To promote human rights and create awareness among all stakeholders; and
- Investigation of individual and systemic complaints of human rights violations, at the point of occurrence and to provide appropriate redress.

2. General review of the state of financial affairs

2.1 Policy Decisions

In consultation with the Ministry of Social Development and civil society, the Commission established a Unit which will facilitate a formation of a structure to advance the rights of older persons.

2.2 Significant events that took place during the year

- The Commission held an Inquiry into Human Rights Violations in the Khomani San Community, a Public Hearing on Road Closures, Security Booms and other measures and a joint hearing with the Portfolio Committees on Foreign and Home Affairs on Xenophobia.
- A National Equality Indaba was held on 24 and 25 June, which assessed progress made in the realization of equality over the last decade and plotted a way forward.
- A workshop on the Development of a National Equality Barometer on 11 November 2004 brought together key experts in the field of equality to input to the Commission's monitoring instrument.



MANAGEMENT REPORT for the year ended 31 March 2005

- An easy-to-use guide on how to use the Promotion of Access to Information Act (PAIA), as contemplated in section 10 of the Act.
- Recommendations for the reform of PAIA and the Regulations were sent to the Department of Justice and Constitutional Development and Parliament, and a proposal for the establishment of an Information Commissioner's office was developed.
- Workshops were conducted in SADC on Human Rights, Democracy and Worker Union Rights.
- The Commission produced training manuals on Equality and on Human Rights, Democracy and Workers Rights.
- The Northern Cape office was launched in the year under review, and an office was established in Mpumalanga, bringing the number of provincial offices to seven.
- The Commission made submissions on education laws and policies dealing with discipline in schools and the exemption of payment of school fees for the poor; and participated in the Land and Agricultural Affairs Portfolio Committee Public Hearings on the Pace of Land Reform in South Africa.

2.3 Spending Trends

Programme	Expenditure Outcome			
	Audited R'000 2001/02	Audited R'000 2002/03	Audited R'000 2003/04	Audited R'000 2004/05
Commission	6,175	5,922	3,390	3,132
Management	7,431	7,050	12,788	19,612
Advocacy	3,992	3,666	1,468	-
Legal services	2,614	2,607	2,024	2,252
Research & Documentation	2,957	2,896	3,442	4,970
Media & Communication	-	-	-	133
Education & Training	2,444	2,317	1,943	2,478
Provinces	3,351	3,743	4,403	6,250
Total	28,964	28,201	29,458	38,827



MANAGEMENT REPORT for the year ended 31 March 2005

Standard items of expenditure

Programme	Expenditure Outcome			
	Audited R'000 2001/02	Audited R'000 2002/03	Audited R'000 2003/04	Audited R'000 2004/05
Personnel	14,799	14,382	18,330	21,246
Administrative	3,336	3,102	2,005	3,729
Inventories	603	564	1,178	884
Equipment	480	282	3,093	-
Land & buildings	2,731	2,538	1,860	4,475
Professional services	7,015	7,333	2,992	8,493
Total	28,964	28,201	29,458	38,827
Baseline allocation	21,899	27,401	32,728	37,653



STATEMENT OF RESPONSIBILITY for the year ended 31 March 2005

By the Chief Executive Officer

The financial statements have been prepared in accordance with the following policies, which have been applied consistently in all material respects, unless otherwise indicated. However, where appropriate and meaningful, additional information has been disclosed to enhance the usefulness of the financial statements and to comply with the statutory requirements of the Public Finance Management Act, Act 1 of 1999 (as amended by Act 29 of 1999), the Treasury Regulations for Departments and Constitutional Institutions issued in terms of the Act, and Generally Accepted Accounting Practice (GAAP).

To the best of my knowledge, all representations made in the Annual Financial Statements are appropriate and valid.

Commissioners

The following persons have served as Commissioners during the period under review:

Name	Capacity	From	To
N Kollapen	Chairperson	01-04-2004	31-03-2005
Z Majodina	Deputy Chairperson	01-04-2004	31-03-2005
T Manthata	Commissioner	01-04-2004	31-03-2005
C McClain-Nhlapo	Commissioner	01-04-2004	31-12-2004*
K Govender	Part-time Commissioner	01-04-2004	31-03-2005

*Commissioner McClain-Nhlapo has been on unpaid leave from December 2004.

Role and Function

The Chief Executive Officer is the accounting officer of the SAHRC in terms of the Public Finance Management Act (PFMA).

The Joint Management Committee is responsible for the adoption of strategic plans, the monitoring of operational performance and management, the determination of policy and processes to ensure the integrity of the SAHRC risk management and internal controls.

Audit Committee Members	Number of Meetings Attended
Ms. C Strickett	5
Mr. AJ Mackenzie	2
Mr. T Sedumedi	5
Ms. L Mokate	5

The audit committee is responsible for improving management reporting by overseeing the audit functions, internal controls and the financial reporting process.

Risk Management

The system of internal control is designed for the different components within the SAHRC to tailor and adapt risk management processes to suit specific operational circumstances. The risk management strategy which includes the fraud prevention plan is used by all managers for continuous monitoring of risk and control processes.



STATEMENT OF RESPONSIBILITY for the year ended 31 March 2005

Internal Audit

The internal audit function has been outsourced to an external firm of auditors.

SAHRC Address

29 Princess of Wales Terrace
Private Bag 2700, Houghton, Johannesburg, 2041

Bankers

First National Bank, Parktown

Chief Executive Officer

The Chief Executive Officer during the year under review was Ms. L Mokate.

Property, plant and equipment

There have been no major changes to the property, plant and equipment held during the period under review nor have there been any changes in the policy relating to the use thereof.

Subsequent Events

There have been no facts or circumstances of a material nature that have occurred between the accounting date and the date of this report.

Auditors

Office of the Auditor-General

The annual financial statements for the year ended 31 March 2005 as set out on pages 67 to 84 were resubmitted for audit on 30th June 2005 and were approved by the accounting officer in terms of section 51(1)(f) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) as amended, and signed on behalf of the SAHRC by:



Ms. L Mokate
Chief Executive Officer



BALANCE SHEET
as at 31 March 2005

	Notes	2005 R	2004 R
ASSETS			
Non-current assets			
Property, plant and equipment	2	4,892,802	3,080,218
Current assets		6,975,476	6,572,535
Trade and other receivables	3	399,305	409,589
SAHRC Trust	4	203,427	203,249
Cash and cash equivalents	5	6,372,744	5,959,697
Total assets		11,868,278	9,652,753
EQUITY AND LIABILITIES			
Reserves			
Retained income		6,146,430	5,498,364
Current liabilities		5,721,848	4,154,389
Trade and other payables	6	3,403,172	1,443,730
Own funded projects roll-over	7	-	211,150
Donated project funds roll-over	8	1,026,871	1,997,363
Provisions	9	1,291,805	502,146
Total equity and liabilities		11,868,278	9,652,753



ABRIDGED INCOME STATEMENT
for the year ended 31 March 2005

	Notes	2005 R	2004 R
Income		39,045,960	33,205,660
Donations	10	-	100,236
Grants	10	37,653,000	32,785,000
Other Income	10	1,392,960	320,424
Expenditure		38,827,409	29,458,174
Administrative expenses	11	8,203,794	4,916,436
Staff costs	12	21,246,358	18,330,026
Other operating expenditure	13	8,448,873	5,254,962
Depreciation	14	928,384	956,750
Surplus from operations		218,551	3,747,486
Financing cost	15	(240)	(202)
Income from investments	16	429,755	568,542
Surplus for the year		648,066	4,315,826

STATEMENT OF CHANGES IN NET ASSETS / EQUITY
for the year ended 31 March 2005

		Retained Income
Balance at 1 April 2003		2,563,068
Adjustment for fundamental error	18	(1,380,530)
Restated retained earnings		1,182,538
Net profit for the year		4,315,826
Balance at 1 April 2004		5,498,364
Net Profit for the year		648,066
Balance at 31 March 2005		6,146,430



CASH FLOW STATEMENT
for the year ended 31 March 2005

	Notes	2005 R	2004 R
Operating activities			
Cash generated from operations	17	2,724,498	2,685,083
Interest income		429,755	568,542
Interest expense		(240)	(202)
Net cash from operating activities		<u>3,154,013</u>	<u>3,253,423</u>
Investing activities			
Acquisition of assets		(2,740,966)	(1,967,840)
Net cash used in investing activities		<u>(2,740,966)</u>	<u>(1,967,840)</u>
Financing activities		<u>-</u>	<u>-</u>
Net increase in cash and cash equivalents		413,047	1,285,583
Cash and cash equivalents at beginning of year		5,959,697	4,674,114
Cash and cash equivalents at end of year	5	<u><u>6,372,744</u></u>	<u><u>5,959,697</u></u>



NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2005

1. ACCOUNTING POLICIES

The financial statements have been prepared in accordance with the following policies, which have been applied consistently in all material respects, unless otherwise indicated. However, where appropriate, meaningful, additional information has been disclosed to enhance the use of the financial statements and to comply with the statutory requirements of the Public Finance Management Act, Act 1 of 1999 (as amended by Act 29 of 1999) as well as the Treasury Regulations for Departments and Constitutional Institutions issued in terms of the Act.

1.1 Basis of preparation

The annual financial statements of the South African Human Rights Commission are presented on the historical cost basis of accounting in conformity with South African Statements of Generally Accepted Accounting Practice (GAAP). Under the accrual method of accounting, transactions and other events are recognised when incurred and not when cash is received or paid. In terms of donor requirements, and financial agreements with benefactors, all transactions for donor-funded projects are recognised on the cash basis of accounting.

1.2 Accounting policies

The accounting policies applied are consistent in all material respects with those applied in the previous financial year except where stated otherwise.

1.3 Revenue

Voted funds are the amounts appropriated to the SAHRC by National Treasury in accordance with the final budget.

1.4 Donor Funds

1.4.1 In terms of donor requirements contained in financial agreements with benefactors, unexpended donor funds ring fenced for specific projects are reflected as current liabilities in circumstances where such funds are repayable to donors in the event of the funds not being utilised on the specific project.

1.4.2 Unexpended donor funds that are not required to be repaid that relate to completed projects, are treated as operating income in the year that the projects are deemed completed.

1.5 Current Expenditure

Current expenditure is recognised in the income statement on an accrual basis.



NOTES TO THE ANNUAL FINANCIAL STATEMENTS for the year ended 31 March 2005

1.5.1 Inventory

Inventory is purchased when required, and is expensed in the income statement.

1.6 Property, plant and equipment

Property, plant and equipment are shown at cost less accumulated depreciation. These assets are depreciated on the straight-line basis at rates, which will result in each asset being written off over its useful life.

Item	Write-Off period in years	Depreciation rate
Computer Equipment	3	33.3% pa
Office Furniture and Equipment	4	25% pa
Motor vehicles	5	20% pa
Library Material	Not depreciated	

The carrying value of property is reviewed for impairment when events or changes in circumstance indicate that the carrying amount may not be recoverable. If any such indication exists and where the carrying amount exceeds the estimated recoverable amount, the assets are written down to their recoverable amount. Impairment losses and the reversal of impairment losses are recognised in the income statement.

All assets valued at less than R1000.00 have been expensed during the year under review.

1.7 Receivables

Accounts receivables are stated at their nominal value as reduced by appropriate allowances for estimated irrecoverable amounts.

1.8 Payables

Trade and other payables are stated at their nominal value.

1.9 Provisions

Provisions are recognized when the Commission has a present obligation as a result of a past event and it is probable that this will result in an outflow of economic benefits that can be estimated reliably.

1.10 Accruals

This amount represents goods and services that have been delivered, but where no invoice has been received from the supplier at the year-end, or an invoice has been received, but remains unpaid at year-end.



**NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005**

1.11 Salaries and Wages

Short – Term Employee Benefits

The cost of the short-term employee benefits is expensed in the income statement in the reporting period that the payment is made.

1.12 Employee Benefits

1.12.1 Termination Benefits

Termination benefits are recognised and expensed only when the payment is made.

1.12.2 Retirement Benefits

The SAHRC provides retirement benefits for its employees through a defined contribution plan.

1.12.3 Medical Benefits

The SAHRC provides medical benefits for its employees through a defined contribution plan. These benefits are funded by both employer and employee contributions.

1.13 Comparative Figures

Where necessary, comparative figures have been adjusted to conform to changes in presentation in the current year.

1.14 Projects

For the current year, unexpended donor funds relating to incomplete projects and SAHRC re-imbursive allowances are reflected as current liabilities.



2. Property, plant and equipment

	Balances as at 01 April 2004			Current Year Movements			Balances as at 31 March 2005			
	Gross carrying amount	Accumulated Depreciation	Net carrying amount	Fundamental error in Opening Gross amount***	Additions	Disposal	Depreciation for the year	Gross carrying amount	Accumulated Depreciation	Net carrying amount
	R	R	R		R	R	R	R	R	R
Motor vehicles	458,759	213,904	244,855	-	197,492	-	108,520	656,251	322,424	333,827
Computer equipment	3,370,728	3,150,345	220,383	-	958,345	-	235,922	4,329,073	3,386,267	942,806
Office equipment	1,898,805	729,190	1,169,615	-	806,142	-	400,500	2,704,947	1,129,690	1,575,257
Furniture and Fittings	2,445,396	2,096,429	348,967	-	411,449	-	183,442	2,856,845	2,279,871	576,974
Library Material	1,096,400	-	1,096,400	-	367,538	-	-	1,463,938	-	1,463,938
Total	9,270,088	6,189,868	3,080,220	-	2,740,966	-	928,384	12,011,054	7,118,252	4,892,802

2. Property, Plant and Equipment

	Balances as at 01 April 2003			Current Year Movements			Balances as at 31 March 2004			
	Gross carrying amount	Accumulated Depreciation	Net carrying amount	Fundamental error in Opening Gross amount***	Additions	Disposal	Depreciation for the year	Gross carrying amount	Accumulated Depreciation	Net carrying amount
	R	R	R		R	R	R	R	R	R
Motor vehicle	272,253	151,752	120,501	-	186,506	-	62,152	458,759	213,904	244,855
Computer equipment	3,247,869	2,726,754	521,115	(934,868)	1,057,727	-	423,591	3,370,728	3,150,345	220,383
Office equipment	595,791	521,695	74,096	(19,399)	1,322,412	-	207,495	1,898,804	729,190	1,169,614
Furniture and Fittings	2,089,933	1,832,917	257,016	(171,022)	526,485	-	263,512	2,445,396	2,096,429	348,967
Library Material	1,096,400	-	1,096,400	-	-	-	-	1,096,400	-	1,096,400
Total	7,302,246	5,233,118	2,069,128	(1,125,290)	3,093,130	-	956,750	9,270,086	6,189,868	3,080,218

***Refer to note 6.1

NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

	2005 R	2004 R
3. Trade and other receivables	399,305	409,589
Deposit with Gensec (operating lease)	-	215,800
Other receivables	8,575	29,280
Staff loans	123,423	162,724
Rent prepaid	265,522	-
Department of Justice	1,785	1,785
Staff loans are in terms of a staff loan policy, and are approved as per policy.		
4. SAHRC Trust	203,427	203,249
The SAHRC Trust account is a bank account that operates as an independent trust with a Trust Deed. The SAHRC is the sole beneficiary of the SAHRC Trust. It is the commission's intention to utilise the Trust funds in its other operations in the near future subject to obtaining approval in accordance to the trust deed.		
5. Cash & cash equivalents	6,372,744	5,959,697
Current Account	1,000,160	156,748
Projects accounts	450,812	-
Call Account	4,900,781	5,788,550
Petty Cash	20,991	14,399
6. Trade and other payables	3,403,172	1,443,731
Other accruals / payables	3,403,172	2,569,021
Fundamental error	-	(1,125,290)

6.1



NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

	2005	2004
	R	R
6.1 Fundamental error		
The fundamental error arose from assets that were accrued for in 2003/04 financial year but were either never received at all by the commission or were received and capitalised in 2004/05 financial year. The details are as follows:	-	(1,125,290)
Office Equipment	-	(19,399)
Computer Equipment	-	(934,868)
Furniture and Fittings	-	(171,022)
7. SAHRC own funded projects roll-over	-	211,150
Reimbursive training projects	-	88,861
Farming community EU	-	122,289
8. Donated project funds roll-over	1,026,871	1,997,363
Roll back Xenophobia Secretariat of African National Institutions	326,191	218,129
National Conference on Racism	36,262	24,709
Norwegian Field Project	-	255,164
Duma Nokwe	359,863	-
Vryburg Police Project	-	10,068
World Conference Against Racism	86,748	86,748
Mott Foundation	-	223,468
EU Training Project	217,807	245,479
Evaluation of SAHRC / 10 Year Review	-	(21,031)
Equality Legislation Project	-	185,321
	-	769,308



NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

	2005 R	2004 R
9. Provisions		
9.1 Leave pay provision	1,291,805	502,146
Leave pay provision	1,208,275	502,146
Salary in dispute	83,530	-
10. Income	39,045,960	33,205,660
Donations income	-	100,236
SA Government grant	37,653,000	32,785,000
Projects completed and per commission resolution taken as income	1,140,400	-
Sundry income	252,560	320,424
10.1 Projects closed off - balances transferred to income	1,140,400	-
Duma Nokwe	10,069	-
Foundation For Human Rights	122,290	-
National Conference for Human Rights	253,164	-
Equality Legislation Project	743,359	-
World Conference Against Racism	10,378	-
Evaluation of SAHRC / 10 Year Review	1,140	-
11. Administrative expenses	8,203,794	4,916,436
Advertising	198,640	297,478
External Audit fees	345,062	436,468
Internal Audit fees	331,603	-
Bank charges	24,191	56,200
Computer expenses	127,723	280,621
Courier and postage	87,205	67,699
Legal fees	55,178	109,082
Insurance	358,905	309,856
Lease and hire expenses	928,874	886,084
Printing and stationery	1,084,533	429,838
Refreshments and catering	-	141,859
Rent and services	4,475,170	1,860,023
Repair and maintenance	186,710	41,228



NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

	2005 R	2004 R
12. Staff cost		
Staff costs amounting to include the following:	21,246,358	18,330,026
Aggregated remuneration paid to:	4,837,759	5,038,642
Commissioners	2,380,448	2,488,560
Chief Executive Officer	542,845	498,513
Chief Financial Officer	309,953	323,623
Other senior managers	1,604,513	1,727,946
13. Other operating expenditure	8,448,873	5,254,962
Book and subscription	8,994	7,212
Conference and workshops	819,002	156,958
Consulting fees	1,777,791	930,529
Internal and External liason	257,838	-
Subscription - library materials	199,060	379,937
Motor vehicle expenses	190,672	133,066
Office relocation	-	463,824
Staff development	173,309	150,377
Staff relocation	192,200	30,653
Telephone, cell & fax	1,688,221	770,467
Translation and project cost 13.1	2,410,157	1,348,424
Travel & accommodation	731,629	883,515
13.1 SAHRC - projects	2,410,157	1,348,424
Legal	334,067	40,984
Research	1,086,326	380,986
Advocacy	587,046	534,328
Commisioners	14,162	6,746
Training	388,555	385,380
13.2 Operating lease commitments		
The South African Human Rights Commission future lease commitments in respect of office buildings are as follows:		
Due within one year	15,404,289	13,010,500
Due within two to five years	5,683,878	3,252,625
	9,720,411	9,757,875



NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

	2005	2004
	R	R
14. Depreciation	928,384	956,750
Motor vehicles	108,520	62,152
Computer equipment	235,922	423,591
Office equipment	400,500	207,495
Furniture and fittings	183,442	263,512
15. Finance costs		
Interest expense	(240)	(202)
16. Income from investments		
Interest income - bank deposits	429,755	568,542
17. Cashflow from operating activities		
Surplus for the year	648,066	4,315,826
Adjusted for:		
Depreciation	928,384	956,750
Interest income	(429,755)	(568,542)
Interest expense	240	202
Fundamental error	-	(1,380,530)
	1,146,934	3,323,706
Operating surplus before changes in working capital		
Changes in working capital	1,577,564	(638,623)
Decrease / (Increase) in debtors	10,105	(72,459)
Increase / (Decrease) in creditors	1,567,459	(566,164)
Cash generated from operations	2,724,498	2,685,083



NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

		2005 R	2004 R
18. Fundamental error		-	(1,380,530)
18.1 Rent over -provision		-	-
18.2 Depreciation over provision - computer equipment		-	-
18.3 Reversal of stale cheques		-	-
Reversal of own-funded projects			
18.4 Current year	18.2		(1,633,416)
18.5 Previous year		-	-
18.6 Assets understated		-	-
18.7 Differences in bank account take-on balance	18.3		252,886
18.2 Reversal of own funded projects - prior year		-	(1,633,416)

An adjustment was put through of R 1,633,416 in the year 2003/04 to correct the balances for own funded projects take-on balances, as such the respective balances were restated.

18.3 Differences in Bank account take-on balance

Bank accounts with total value of R 252 886 were omitted from the compilation of the 2002/03 financials and the restatement was effected in 2003/04.



NOTES TO THE ANNUAL FINANCIAL STATEMENTS
for the year ended 31 March 2005

Account Number	Differences in Bank account take-on balance
62010227579	120,960
62009325178	(390)
62010228684	124,898
Total: Project a/cs	245,468
620120296692	278
62011606665	713
62028451516	130
62011468734	6,277
Total petty cash a/cs	7,398
Total	252,866



DETAILED INCOME STATEMENT
for the year ended 31 March 2005

	2005 R	2004 R
Operating income	39,475,716	33,774,202
Donations income	-	100,236
Interest received	429,755	568,542
SA Government grant	37,653,000	32,785,000
Projects completed	1,140,400	-
Sundry income	252,561	320,424
Operating expenditure	38,827,650	29,458,376
Advertising	198,640	297,478
Audit Fees: External	345,062	436,468
Internal	331,603	-
Bank charges	24,191	56,200
Book and subscription	8,994	7,212
Computer expenses	127,723	280,621
Conference and workshops	819,002	156,958
Consulting fees	1,777,791	930,529
Courier and postage	87,205	67,699
Depreciation	928,384	956,750
Legal fees	55,178	109,082
Subscription - library materials	199,060	379,937
Insurance	358,905	309,856
Interest paid	240	202
Internal and External liason	257,838	-
Lease and hire expenses	928,874	886,084
Motor vehicle expenses - maintenance	190,672	133,066
Office relocation	-	463,824
Printing and stationery	1,084,533	429,838
Refreshments and catering	-	141,859
Rent and services	4,475,170	1,860,023
Repair and maintenance	186,710	41,228
Salaries and wages	21,246,359	18,330,026
Staff development	173,309	150,377
Staff relocation	192,200	30,653
Telephone, cell & fax	1,688,221	770,467
Translation and project cost	2,410,157	1,348,424
Travel & accommodation	731,629	883,515
(Shortfall) / Surplus for the year	648,066	4,315,826



ANNEXURE A
SCHEDULE OF DONOR FUNDED / OWN FUNDED
PROJECT ROLL-OVER
as at 31 March 2005

Donor Funded Projects	Balance April 04 R	Income Received R	Actual Expenses R	Balance March 05 R
941/019 Norwegian Field Project	-	450,179	(90,316)	359,863
941/014 UNHCR (Roll back Xenophobia)	218,129	-	108,062	326,191
941/001 Secretariat of African National Institutions	47,239	105,474	(116,451)	36,262
941/012 World Conference Against Racism	223,467	-	(223,467)	-
941/003 Duma Nokwe	10,069	-	(10,069)	-
941/007 National Conference on Racism	255,165	-	(255,165)	-
941/009 Vryburg Police Project (NZ)	86,748	-	-	86,748
941/017 Mott foundation 200300731	245,479	-	(27,672)	217,807
941/011 Equality Legislation Project	769,308	-	(769,308)	-
941/006 SAHRC 10 year review	185,321	-	(185,321)	-
Sub-total	2,040,925	555,653	(1,569,707)	1,026,871
Transferred to rollover account	2,040,925	555,653	(1,569,707)	1,026,871



ANNEXURE A
SCHEDULE OF DONOR FUNDED / OWN FUNDED
PROJECT ROLL-OVER
as at 31 March 2005

Own Funded Projects	Balance April 04	Income Received	Actual Expenses	Balance March 05
	R	R	R	R
941/004 Own funded training project 4	88,861	-	(88,861)	-
941/016 Farming community EU	122,289	-	(122,289)	-
Own funded projects	211,150	-	(211,150)	-

Total projects	Balance Apr-04	Income Received	Actual Expenses	Balance Mar-05
Projects Sub-total	2,252,075	555,653	(1,780,857)	1,026,871
Projects total	2,252,075	555,653	(1,780,857)	1,026,871



SECTION 5: ANNEXURES
Promotion of Access to Information Act Report to Parliament



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PART 1

1. Introduction

This is the third annual report of the South African Human Rights Commission (hereinafter referred to as 'the Commission') to the National Assembly in terms of its statutory duty under section 83(1)(b) of the Promotion of Access to Information Act, No 2 of 2000 (hereinafter referred to as 'PAIA' and 'the Act' interchangeably). This annual report is in respect of the reporting period 1 April 2004 to 31 March 2005.

The content of this report is guided largely by section 84 of PAIA, which specifies the Commission must report on:

- Any recommendations made by the Commission for the development, improvement, modernisation, reform and amendment of the Act, or other legislation having a bearing on access to information held by public and private bodies;
- Procedures in terms of which public and private bodies make information electronically available
- Statistics from public bodies furnished in terms of section 32 of the Act

The section 32 statistics are the main focus of this report and can be found in Part 2. Over and above the reporting requirements of section 84, this report contains details of activities of the Commission with respect to PAIA, as well as a brief summary of emerging jurisprudence during the reporting period. The work of the Commission in the area of PAIA is predominantly operationalised by the PAIA Unit, within the Research and Documentation Department, overseen by Commissioner Leon Wessels.

2. Report on the activities of the Commission in relation to PAIA

2.1 The Guide in terms of section 10 of PAIA

The core activity of the Commission in relation to PAIA during the reporting period was the compilation of the Guide in terms of section 10 of the Act. The purpose of the Guide is to provide such information in an easily comprehensible manner as may be reasonably required by a person who wishes to exercise a right in terms of PAIA. The Commission had to compile the section 10 Guide within three years of the commencement of PAIA, by virtue of section 20 of the Judicial Matters Second Amendment Act, No 55 of 2003. Thus the deadline for compilation was 15 February 2005. An embargoed copy of the Guide was delivered to the Department of Justice on 15 February 2005, in compliance with the deadline.

In the previous annual report, the Commission highlighted the cost implications with regard to the distribution of the Guide as prescribed by Regulations 2 and 3 to the Act, and indicated that the estimated cost of production and publication of the Guide was R 2 million. The problem of excessive costs was addressed by the following:



- The Guide was compiled as a single publication and not as 11 separate publications in each of the 11 official languages;
- The Guide comprised a narrative part and a part containing the contact details of various public bodies;
- The narrative part of the Guide was translated and published in the 11 official languages within the single publication;
- The part containing the contact details of the various public bodies was published in English;
- 2000 copies of the Guide were printed and an electronic version of the Guide was made available on the website of the Commission for access by private bodies.

The total costs incurred in the compilation of the Guide, including translation, layout and printing, was R 427 428. 81.

2.2 The national launch of the Guide

On 1 March 2005, the Commission hosted the national launch of the section 10 Guide at the offices of the Commission in Johannesburg. The launch was attended by information officers from provincial hospitals, provincial departments, non-governmental organisations, various public bodies as well as by the media. At the launch, a copy of the Guide was officially handed over to the Deputy Minister of Justice and Constitutional Development.

2.3 Distribution of the Guide

For the financial year beginning 1 April 2005, the PAIA Unit of the Commission will attend to the distribution of the Guide as prescribed in Regulations 2 and 3 to the Act. The distribution process has already commenced, with copies of the Guide being made available to places of legal deposit as prescribed in Regulation (2)(1)(a)(ii) read together with the Legal Deposit Act, 1997.

2.4 The Third International Conference of Information Commissioners

The Third International Conference of Information Commissioners was held in Cancun, Mexico on 21, 22 and 23 February 2005. Commissioner Leon Wessels and Adv Mothusi Lepheana, the then manager of the PAIA Unit, represented the Commission at this conference. Attendance at the conference provided invaluable international exposure and experience on access to information issues.

3. Recommendations made by the Commission for the development, improvement, modernisation, reform and amendment of the Act

In the course of the reporting period, the Commission held two meetings with officials from the Department of Justice and Constitutional Development. At these meetings, discussions were held concerning amendments and/or reform of the Act. The Commission made the following proposals:



3.1 Section 14 and 51 Manuals

The obligation of the Commission to receive and make available section 14 and 51 manuals for public inspection arises from Regulations 4 and 5 to PAIA, which provide that the information officer of a public body and the head of a private body must make available a copy of their manuals to the Commission. Regulation 4 prescribes that the Commission must during office hours and upon request, make available for public inspection copies of section 14 manuals. While Regulation 5 does not impose an obligation on the Commission to make available the manuals of private bodies for inspection, it does oblige the Commission to be the depository of section 51 manuals.

The effect of these Regulations is that there is a need for the Commission to develop an information management system to facilitate the sorting, storage and retrieval of manuals. This is costly for the Commission and also unnecessary, as a statutory duty is imposed upon each public body and private body to keep a copy of their manual at its offices. The Commission therefore recommends that the Regulations be amended to remove the Commission's obligation to be the depository of both section 14 and 51 manuals.

3.2 Exemption of indigent persons from paying fees when requesting access to information in terms of sections 22 and 54 of the Act

The Commission recommends that the Legislature consider the exemption of indigent persons from paying the request fee. Requesters currently have to pay a fee of R30.

3.3 Definition of information officer

According to PAIA, the information officer at the provincial level of government is the Director-General of the Province. The consequence of this definition is that the Director-General of the province is the information officer for all provincial departments in the province. Thus a requester is required to submit a request for information to the Director-General in the Premier's Office instead of to the Head of Department of the provincial department to which the request is directed. As a result, the provincial departments are not sure whether to prepare one section 32 report or develop a report for each provincial department. The Commission therefore suggests that the definition of the information officer be reviewed.

3.4 Office of the information commissioner

The Commission noted that there is a need for a cheaper and simpler enforcement mechanism to handle complaints pertaining to the right of access to information. In this regard, the Commission is looking into the feasibility of establishing an office of the information commissioner.



4. Case law

During the reporting period there were significant judgements on PAIA. This is reflective of a slow yet developing jurisprudence on PAIA.

4.1 *Treatment Action Campaign (TAC) v Minister of Health.*¹

The issue in this case revolved around costs. The applicant (TAC) had made a request to the respondent (Minister of Health) in terms of section 18(1) of PAIA. The request was made on 2 March 2004. The respondent failed to provide the applicant with the requested information. The applicant then sought relief from the High Court to declare such default by the respondent to be inconsistent with the Constitution and PAIA, and thus invalid. The applicant also sought an order directing the respondent to furnish the applicant with copies of the records, and to pay the costs of the applicant's suit on the attorney and own client scale.

The information requested by TAC were Annexures A1 and A2 referred to in the respondent's Operational Plan for Comprehensive HIV and Aids Care, Management and Treatment for South Africa ('the Operational Plan'). Prior to the application to court, the applicant had sought the information by means of a missive that was ignored by the respondent. The applicant then made a formal request under the Act and thereafter lodged an internal appeal with the Minister.

In the respondent's answering affidavit, it was averred that reference to the Annexures had been an error and that no approved annexure existed. The Annexures referred to had, apparently, been draft documents produced by the William J Clinton Presidential Foundation which was assisting the Department of Health in the planning of its anti-retroviral drugs roll-out. The Annexures were therefore not presented as part of the Operational Plan and were accordingly not published when the plan was published. Due to an oversight, all references to the Annexures in the plan and in the executive summary were not removed. The respondent also averred that there was no obligation to make the requested Annexures publicly available, as they were no more than drafts or working guidelines.

Upon reading that the Annexures were not part of the respondent's Operational Plan, TAC decided to withdraw its request for such records. However, it sought a costs order against the respondent on the attorney and own client scale, based on the gross negligence and unconstitutional conduct by the respondent in creating confusion, which occasioned TAC's request for access to the Annexures, and further having failed to clarify the true state of affairs in the face of repeated requests by the applicant. The respondent did not make any tender for costs.

¹ Unreported judgement of the Transvaal Provincial Division delivered on 14 December 2004, Case No 15991/04



Judgement

The learned Judge Ranchod held that the information sought comprised of records of a public body as contemplated by section 11(1) of PAIA² and that access to the information sought was not refused on any grounds whatsoever, even any of the grounds of refusal contemplated in Chapter 4 of Part 2 of PAIA.

It was held further that the respondent or her Department ought to have been aware of the oversight regarding the Annexures by at least 20 February 2004, when TAC wrote to the Minister and made specific mention of same. According to the learned judge, had TAC been informed of this earlier, the application would not have been lodged.

The learned judge went on to state that the respondent and her Department did not comply with the constitutional obligations imposed upon them in terms of section 195(1)(a), (f) and (g).³ It was the misleading references in Annexures A1 and A2 in the published version of the Operational Plan that precipitated TAC launching the application. The learned judge held further that the failure of the respondent and her Department to respond to TAC's request in terms of PAIA and to its subsequent appeal under the Act, was in breach of the Department's obligations under the Act, and was accordingly inconsistent with section 1(c)⁴ of the Constitution.

Judgement regarding Costs

The main issue was that of costs and the learned judge said that the general rule is that costs follow the event; that is, costs should be granted to the successful party. This, said the learned judge, is based on the premise that because a party has been successful, it should be able to recover its costs as these were unnecessarily incurred. He also stated that in the exercise of its discretion, courts have on occasion departed from the rule that the successful party should at all times be favoured with a costs order and that such a departure only occurs in exceptional circumstances. The learned judge indicated that in the present circumstances, both in terms of constitutional principles of appropriate relief and just equitable redress for unconstitutional conduct, and further in terms of the ordinary common law principles of liability for costs, the respondent should be ordered to pay the applicant's costs, notwithstanding the fact that the applicant had withdrawn its application for substantive relief.

Accordingly the costs order was made, to the effect that the respondent pay TAC's costs of the application on the scale as between attorney and client.

² Section 11(1) provides that

'A requester must be given access to a record of a public body if- (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and (b) access to that record is not refused in terms of any ground of refusal contemplated in Chapter 4 of Part 2.

³ Section 195(1) provides: Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles: (a) a high standard of professional ethics must be promoted and maintained; (f) public administration must be accountable; and (g) transparency must be fostered by providing the public with timely, accessible and accurate information.

⁴ The Republic of South Africa is one sovereign democratic state founded on *inter alia* values such as Supremacy of the Constitution and the rule of law.



4.2 *Minister for Local and Provincial Department of the Republic of South Africa v Unrecognised Traditional Leaders of the Limpopo Province (Sekhukhuneland)*⁵

The Minister appealed to the Supreme Court of Appeal against a decision by the court *a quo* granting the respondent access to a report sought in terms of PAIA. The report was produced by the Ralushai Commission, established by the Premier of the Limpopo Province to investigate disputes relating to irregularities and malpractices in the appointment of certain traditional leaders in the Province. The Ralushi Commission was also required to recommend steps to be taken by the Premier to resolve such disputes.

The respondent had sought access to the report in terms of section 18 of PAIA from the Ralushi Commission, but was advised that the report had been referred to the Premier 'for further handling'. The respondent then directed its letter to the Minister, to which the information officer in the office of the Minister responded that he was empowered to refuse a request for access to the report. The information officer referred the respondent to section 44(1) of the Act. Section 44(1)(a) provides that the information officer may refuse a request for access to a record if it contains an opinion, advice, report or recommendation obtained or prepared, or an account of a consultation or discussion that has occurred including, but not limited to, minutes of meetings, for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law.

Section 44(1)(b) provides that access may be refused if the disclosure could reasonably be expected to frustrate the deliberative process by inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or that access may be refused if disclosure could, by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy.

The court *a quo* had dismissed the appellant's contention stating that the disclosure of the report would frustrate the deliberative process, or would inhibit candid communication of the report or the conduct of the debate. The disclosure, according to the court *a quo*, could also amount to the premature disclosure of a policy, because it did not contain any information on national policy that was still being formulated. The learned Judge found that the report fell within the scope of section 44(1)(a), but held that the information officer had failed to consider that refusal of access in terms of section 44(1)(a) was not mandatory.

On appeal, the court looked at whether the court *a quo* had correctly interpreted and applied section 44(1) to the facts of the case.

Judgement

The court found that the proper interpretation of subsection 44(1)(a) depended largely on the meaning to be ascribed to the phrase 'obtain for the purpose of formulating a policy'. The court declared further that the genesis of the legislation was the Constitution, and that the Act must be interpreted with due regard to the terms and spirit of the Constitution.

⁵ 2005(2) SA 110 (SCA)



The court held that section 44(1)(a) limits the right of access to information and that section 36 of the Constitution requires that the scope of such a provision be restricted only to an extent that is reasonable and justifiable in an open and democratic society. Section 39 of the Constitution obliges every court to promote 'the spirit, purport and objects of the Bill of Rights' when interpreting any legislation. The court stated further that PAIA was enacted to give effect to the right of access to information and to promote the values of openness, transparency and accountability, which are fundamental to the Constitution.

The court, having considered the above, held that the restrictive meaning of 'obtain' was to be preferred, which meant procuring information for any purpose referred to in subsection 44(1)(a). In view of this interpretation, the court held that the Minister did not 'obtain' the report in terms of section 44(1)(a). Consequently the withholding thereof was not justified. The appeal was accordingly dismissed with costs.

4.3 *The Trustees for the time being of the Biowatch Trust v the Registrar: Genetic Resources, the Executive Council for Genetically Modified Organisms, the Minister for Agriculture and Others*⁶.

This case concerned an High Court application brought by the trustees of the Biowatch Trust ('Biowatch') for access to information held by the first respondent; the Registrar: Genetic Resource ('the Registrar'), and the second respondent, the Executive Council for Genetically Modified Organisms ('the Council').

In its application, Biowatch relied on the Genetically Modified Organisms Act No 15 of 1997 ('the GMO Act'), the National Environmental Management Act No 107 of 1998 ('NEMA') as well as section 32 of the Constitution of the Republic of South Africa Act No 108 of 1996 ('the Constitution').

Biowatch made its requests for access to information between the promulgation of PAIA on 2 February 2000, and the date upon which it came into operation, viz. 9 March 2001. The first request was made on 19 July 2000 and was not substantively responded to by the Registrar. The second request was made on 23 August 2000, regarding GMO permits and risk assessment data. A list of all GMO permits was furnished to Biowatch. However, access to the risk assessment data was refused on the basis of the prohibition contained in section 18(1) of the GMO Act⁷. This request was belatedly responded to on or about 26 October 2000.

Biowatch made its third request on 19 October 2000, requesting information regarding the legislation under which trial licences were granted prior to the coming into operation of the GMO Act, an update of all licences granted prior to the GMO Act, submission for Biowatch to inspect licences and other forms of authority, as well as permission to inspect the records regarding compliance with public participation provisions under the GMO Act, details of pending applications to GMOs, and the exact co-ordinates of fields trials and crops that

⁶ Case No 23005/2002, delivered on 23 February 2005, Transvaal Provincial Division

⁷ Section 18(1) provides that

'No person shall disclose any information acquired by him or her through the exercise of his or her powers or performance of his or her duties in terms of this Act, except (a) in so far as it is necessary for the proper application of the provisions of this Act; (b) for the purposes of any legal proceedings under this Act; (c) when ordered to do so by any competent court; or (d) if he or she is authorised to do so by the Minister.



had been approved for commercial release. The Registrar responded promptly to the request but the response was somewhat incomplete. The fourth request was made on 26 February 2001 Biowatch pointed out that it was entitled to the information in terms of section 32(1)(a) of the Constitution.

Retrospective application of PAIA

The Registrar contended that PAIA governs all requests and granting of information. The Registrar further contended that section 78 of PAIA defers all applications to a court of law until all internal remedies have been exhausted. Monsanto, one of the respondents, contended that the court proceedings were premature and should be dismissed in terms of section 78, because Biowatch had failed to follow the internal appeal procedure.

Dealing with the retrospective application of PAIA, Biowatch raised the question of whether PAIA applied to the requests for information it had made prior to the coming into effect of PAIA. Counsel for Biowatch submitted five reasons as to why PAIA does not apply retrospectively. They were as follows:

- (a) Retrospectively applied legislation operates unfairly against persons in that it has a tendency to divest parties of rights that have accrued, and does not permit parties to arrange their affairs based upon the law as it stands at the time that they do so.
- (b) At the time of Biowatch's requests for information they were entirely valid since they complied with the requirements of section 31⁸ of NEMA and section 32 of the Constitution. Thus, if the provisions of PAIA were to be applied retrospectively, Biowatch's requests would become invalid solely on the ground that they were not in the prescribed format.
- (c) Retrospective application of PAIA would produce another odd result, in that, for example, if requests for access were made and declined prior to the commencement of PAIA, the requester could institute proceedings before PAIA came into effect.
- (d) The provisions of section 32 of the Constitution were designed to create and encourage access to information. Were PAIA to be applied retrospectively in a manner that denies access to information, it would be at odds with the Constitution and would also not be in accordance with the constitutional objectives of PAIA.
- (e) The legislature in express and unequivocal terms, enjoined all courts of law to interpret legislation relating to environmental matters in such a way that the spirit, object and principles of section 2⁹ of NEMA are given effect to.

⁸ Section 31 of NEMA provides that:

'Access to information held by the State is governed by the statute contemplated under section 32 of the Constitution: Provided that pending the promulgation of such statute, the following provision shall apply: (a) every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act; (c) a request to information contemplated (a) can be refused only: (i) if the request is manifestly unreasonable or formulated in too general a manner; (ii) if public or national security would be negatively affected by the supply of the information; or (iii) for the reasonable protection of commercial confidential information; (iv) if the granting of information endangers or further endangers the protection of the environment; and (v) for the reasonable protection of personal privacy.

⁹ The principles set out in this section apply throughout the Republic to the action of all organs of state that may significantly affect the environment and (a) shall apply alongside all other appropriate and relevant considerations, including the State responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination.



The Open Democracy Advice Centre ('ODAC') appeared as amicus curiae and submitted that PAIA should not be applied retrospectively unless there were clear indications to the contrary. ODAC contended that the type of retrospectivity contended for by the respondent could be described as retrospectivity in the 'weak' sense, as opposed to true retrospectivity, or so-called 'strong' retrospectivity, which denotes that a statute is to operate from an earlier date¹⁰.

Monsanto argued that Biowatch's right of access to information only accrued or 'crystallised' when it launched its application on 22 August 2002, and accordingly its rights should be determined by reference to the provisions of PAIA that were then in operation.

Failure to exhaust internal remedies by Biowatch

The first, second and third respondents and Monsanto contended that Biowatch was required, but had failed to exhaust the internal appeal procedure contained in section 19 of the GMO Act. They submitted that section 19 was intended to constitute an exclusive domestic remedy, which must be exhausted prior to any application to court. The appeal remedy in section 19¹¹ allows for an appeal against any decision or action taken by the Council, the Registrar or an inspector. From the facts of this case, the only discernable decision or action by either the Registrar or Council is the Registrar's decision, in relation to Biowatch's third request, to refuse to provide Biowatch with the exact coordinates of the locations where field trials are undertaken.

Judgement

In dealing with the issue of Biowatch's right to request information, the learned judge pronounced that he did not agree that Biowatch's right of access to information only accrued or crystallised when it launched the proceedings in court. It was held that Biowatch's right in this regard accrued or 'crystallised' on each of the occasions on which it submitted its requests for information to the Registrar.

Pronouncing on the argument that the applicant must have exhausted the internal remedies before approaching court, the learned Judge indicated that the Registrar and the Council were clearly not public bodies of the kind contemplated in paragraph (a) of the definition of a public body in terms of PAIA. However, the Registrar and the Council were public bodies of the kind contemplated in paragraph (b)(ii) of the definition of public bodies under PAIA. They were public bodies in that they were exercising a public power or performing a public function in terms of legislation. As a consequence thereof, the mandatory internal appeal procedure provided for in section 74 read together with section 78(1) of PAIA did not apply to Biowatch's requests.

In dealing with section 19 of the GMO Act, the court held that the GMO Act did not expressly state that recourse to the courts is to be deferred until the internal

¹⁰ *National Director of Prosecution, v Carolus and Others*, 2000(1) SA 1127 (SCA) at 1138F– 1139 B

¹¹ Section 19(1)

'A person who feels aggrieved by any decision or action taken by the Council, the registrar or an inspector in terms of this Act, may, within the period and in the manner prescribed and upon payment of the prescribed fee, appeal against such decision or action to the Minister, who shall appoint an Appeal Board for the purpose of the appeal concerned'.



appeal procedure provided for in section 19 thereof is exhausted. Thus Biowatch's failure to follow the internal appeal procedure catered for in section 19 was not necessarily an impediment to the relief it sought in this application.

Addressing the important question of retrospective application of PAIA, the court held that the provisions of PAIA could not be applied retrospectively to nullify the validity of Biowatch's requests for information. However, the learned judge indicated that he was not convinced that it could not be applied retrospectively to the degree that the Registrar would be entitled to rely on the provisions of Chapter 4 of Part 2 thereof as grounds for refusal of access to the records sought. The learned judge referred to the English case of *L 'Office Cherifien des Phosphate and Another v Yamashit-Shinnihon Steamship Co Ltd: The Boucraa*.¹² In this case, the House of Lords was concerned with a new statutory provision that amended the Arbitration Act, 1950. The new statutory provision empowered an arbitrator to make an award dismissing a claim if there had been an inordinate and inexcusable delay on the part of the claimant, which caused substantial risk of unfairness or serious prejudice to the other party. Lord Mustill, who delivered the majority judgement in the case, approvingly referred to the following statement by Staughton LJ in the case of *Secretary of State for Social Security and Another v Tunncliffe*¹³:

'In my judgement the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree - the greater the unfairness, the more it is expected that Parliament will make it clear if that is intended'.

Taking this into account in the *Tunncliffe* case, Lord Mustill stated that, 'fairness in respect of a particular statute will depend on the interaction of several factors, capable of varying from case to case. Thus, the degree to which the statute has retrospective effect is not constant. All the factors must be weighed together to provide a direct answer to the question whether the consequences of reading the statute with the suggested degree of retrospectivity are so unfair that the words used by Parliament cannot have been intended to mean what they might appear to say'.¹⁴

In the *Biowatch*, case the learned judge stated that once it is recognised that Biowatch never had an absolute right of access to information under section 32(1)(a) of the Constitution and that PAIA was enacted to give effect to this right, it would not be unfair to Biowatch, or for that matter any of the other parties involved in the application, if the grounds for refusal of access to records contemplated in Chapter 4 of Part 2 of PAIA were to find application.

The learned judge said that the retrospective application of PAIA to the degree indicated also promotes even-handedness in the operation of the law¹⁵ and avoids the difficulty of balancing the rights of various parties already addressed by the provisions of Chapter 4 of Part 2 of PAIA. In view of these considerations, it was held that the Registrar would be entitled to rely on the provisions of Chapter 4 of

¹² [1994] 1 All ER 20

¹³ [1991] 2 All ER 712 (CA) at 724 F-G

¹⁴ At 30 E-G

¹⁵ See *Kruger v President Insurance Co Ltd* 1994 (2) SA 495 D at 503 F-G



Part 2 of PAIA to refuse access to any record, if he were honestly and *bona fide* of the opinion that such a refusal is justified on the grounds contemplated in Chapter 4 of Part 2 of PAIA – provided, of course, that he would not be entitled to do so merely because Biowatch's requests were not made in the form or in the manner prescribed in PAIA.

In dealing with the matter regarding precision of information sought, as it was argued by the respondents that the Biowatch's requests were not definite, the learned judge held that requesters for information under section 32 of the Constitution or under PAIA would not always have knowledge of the precise description of the record sought. It was held further that if the Registrar had any doubt about the nature and or validity of Biowatch's requests, he was enjoined to establish precisely what it was seeking and to assist it in its endeavours to achieve this. The Registrar was not entitled to adopt a passive role in the regard.¹⁶ The court held that it would not be in the interest of justice if Biowatch were to be non-suited.

Given the above, the court held that the Registrar's failure to grant Biowatch access to such information as it was legally entitled to, constituted a continued infringement of Biowatch's rights under section 32(1)(a) of the Constitution; that Biowatch had no alternative remedy to enforce its rights; that Biowatch should not be non-suited for the inept manner in which the information sought in its fourth request, as well as in its notice of motion, is formulated; and that the Registrar would be entitled to refuse access to certain records, or parts thereof, in terms of the grounds for refusal contained in Chapter 4 of Part 2 PAIA.

The respondents were ordered to provide Biowatch with access to the records sought, to refrain from withholding any portion of the records sought unless they were permitted to in terms of Chapter 4 of Part 2 of PAIA, and to furnish written reasons to Biowatch if they were to refuse access to the records requested or parts thereof.

4.1 Comments on case law

Albeit that the jurisprudence on PAIA has not been prolific, the emerging jurisprudence indicates a trend towards advancing the enjoyment of the right of access to information. In all of the three cases discussed above, the courts have demonstrated a leaning towards granting access to information.

¹⁶ Section 7(2) of the Constitution. In this regard it is also interesting to note that section 19 of PAIA enjoins an information officer of a public body to assist requesters with their requests for information.



PART 2

1. Introduction

In terms of section 32 of PAIA, the information officer of a public body must annually submit a report to the SAHRC providing details in relation to the public body, as follows:

- 1.1 the number of request for access received,
- 1.2 the number of requests for access granted in full,
- 1.3 the number of requests for access granted in terms of section 46 (which stipulates that an information officer of a public body, despite there being a ground for refusal of access, must grant the request for access to a record, if the disclosure is in the interest of the public),
- 1.4 the number of requests for access refused in full and refused partially, as well as the number of times each provision of the Act was relied on, in order to refuse access in full or partially,
- 1.5 the number of cases in which the periods stipulated in section 25(1) (the 30 day period within which the information officer must deal with the request), were extended in terms of section 26(1),
- 1.6 the number of internal appeals lodged with the relevant authority, and the number of cases in which, as a result of the internal appeal, access was given to a record,
- 1.7 the number of internal appeals lodged on the ground that a request was regarded as a deemed refusal in terms of section 27,
- 1.8 the number of applications to every court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77(7) (when the relevant authority fails to give notice of the decision on an internal appeal to the appellant within 30 days after receipt of the appeal, the relevant authority is then regarded as having dismissed the appeal).

2. Submission of section 32 Reports

The number of public bodies submitting section 32 reports continues to remain low, with a decrease in the number of reports received compared to the previous reporting period. This trend is a cause for concern as, four years after the commencement of the Act, information officers are still not complying with their statutory duty under section 32. The result of the Commission not obtaining a greater number of reports is that the extent of use of PAIA by the public cannot be accurately and comprehensively ascertained. Thus there is a pressing need for the briefing of all information officers on their duties under PAIA. This is one of the initiatives that will be actively pursued by the PAIA Unit of the Commission in the current financial year.



As information officers are still not aware of the period for which they are required to furnish the section 32 statistics, coupled with the fact that the reporting period is not in line with the section 32 requirement of annual reporting, the Commission is considering recommending that the reporting period be changed to an annual period, beginning 1 January and ending on 31 December. This will allow the Commission to monitor the use of PAIA on a year-to-year basis, thereby tracking its implementation. This can be affected by the next reporting period, beginning on 9 March 2005 and ending on 31 December 2005, whereafter the reporting periods will then commence on 1 January 2006.

3. The Schedule of Section 32 Reports

The consolidated schedule of section 32 reports hereunder is divided into four different sections. Section 1 consists of section 32 statistics furnished by National Government Departments, Section 2 of statistics furnished by Provincial Government Departments, Section 3 consists of statistics from local government bodies and section 4 consists of statistics from Chapter 9 Institutions, Parastatals and other Public Bodies. The statistics are for the reporting period 9 March 2004 up to and including 8 March 2005. Of the public bodies that submitted reports, one can take cognisance of the fact that the South African Police Service have indicated receipt of 17 001 requests in the reporting period compared to 14 744 received in the previous reporting period. The Department of Transport did not submit its section 32 for the previous reporting period, however, submitted same for this period. It is interesting to note that a total of 716 requests were received by the said department which is a fairly significant number.



Section 1 National Government Departments

Department	Date Submitted	Number of requests for access received Section 32 (a)	Number of requests for access granted in full Section 32 (b)	Number of requests for access granted in terms of section 46 Section 32 (c)	Number of requests for access: a) refused in full b) refused partially c) number of times each provision of the Act was relied on to refuse access in full or partially Section 32 (d)	Number of cases in which the periods stipulated in section 25 (1) were extended in terms of section 26 (1) Section 32 (e)	Number of internal appeals with the relevant authority b) number of cases in which as a result of an internal appeal access was given Section 32 (f)	Number of internal appeals lodged on the ground that a request for access was regarded as having been refused in terms of section 27 Section 32 (g)	Number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 (7) Section 32 (h)	Other Information
1. Agriculture	17/03/05	(21)	(10)	(0)	(a) (2) (b) (4) (c) (6)	(0)	(a) (0) (b) (0)	(0)	(0)	
2. Transport	25/04/05	(716)	(678)	(0)	(1) (20) (0) (9)	(0)	(0) (0) (0) (0)	(0)	(0)	
3. Justice and Constitutional Development	9/03/05	(48)	(13)	(0)	(10) (0) (0) (9)	(20)	(0) (0) (0) (0)	(0)	(0)	
4. Land Affairs	11/03/05	(0)	(0)	(0)	(0) (0) (0) (2)	(0)	(0) (0) (0) (0)	(0)	(0)	
5. Trade and Industry	24/03/05	(5)	(0)	(0)	(2) (2) (0) (2)	(1)	(0) (0) (0) (0)	(0)	(0)	(3) Transferred
6. Treasury	18/03/05	(10)	(2)	(0)	(4) (2) (0) (7)	(0)	(0) (0) (0) (0)	(0)	(0)	
7. National Parliament of the Republic of South Africa	30/03/05	(3)	(2)	(0)	(0) (1) (0) (1)	(1)	(0) (0) (0) (0)	(0)	(0)	
8. Provincial and Local Government	7/04/05	(3)	(1)	(0)	(0) (0) (0) (1)	(0)	(0) (0) (0) (0)	(0)	(0)	(1) Withdrawn
9. Public Enterprises	12/04/05	(1)	(0)	(0)	(0) (0) (0) (1)	(0)	(0) (0) (0) (0)	(0)	(0)	(0)
10. Public Service and Administration	15/04/05	(0)	(0)	(0)	(0) (0) (0) (0)	(0)	(0) (0) (0) (0)	(0)	(0)	
11. Public Works	21/04/05	(7)	(6)	(1)	(1) (1) (0) (0)	(0)	(0) (0) (0) (0)	(0)	(0)	
12. Science and Technology	18/04/05	(1)	(0)	(0)	(0) (0) (0) (0)	(0)	(0) (0) (0) (0)	(0)	(0)	(1) Outstanding
13. Foreign Affairs	18/04/05	(8)	(7)	(0)	(1) (0) (0) (1)	(1)	(1) (0) (0) (0)	(0)	(0)	
14. Minerals and Energy	28/04/05	(40)	(8)	(0)	(20) (0) (0) (0)	(2)	(1) (0) (0) (0)	(0)	(0)	
15. Water Affairs and Forestry	05/05/05	(280)	(279)	(25)	(0) (1) (1) (1)	(2)	(1) (0) (0) (0)	(0)	(0)	



Section 2

Provincial Government Departments

Department	Date Submitted	Number of requests for access received Section 32 (a)	Number of requests for access granted in full Section 32 (b)	Number of requests for access granted in terms of section 46 Section 32 (c)	Number of requests for access: a) refused in full b) refused partially c) number of times each provision of the Act was relied on to refuse access in full or partially Section 32 (d)	Number of cases in which the periods stipulated in section 25 (1) were extended in terms of section 26 (1) Section 32 (e)	Number of internal appeals with the relevant authority b) number of cases in which as a result of an internal appeal access was given Section 32 (f)	Number of internal appeals which were lodged on the ground that a request for access was regarded as having been dismissed in terms of section 27 Section 32 (g)	Number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 (7) Section 32 (h)	Other Information
KwaZulu-Natal					(a) (b) (c)		(a) (b)			
1. Department of Economic Development	28/04/05	(0)	(0)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
Mpumalanga Province										
2. Department of Local Government and Housing	6/04/05	(1)	(1)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
3. Department of Education	21/04/05	(1)	(1)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
Western Cape Province										
1. Provincial Parliament	8/03/05	(0)	(0)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	



Section 3 Local Government

Municipalities	Date Submitted	Number of requests for access received Section 32 (a)	Number of requests for access granted in full Section 32 (b)	Number of requests for access granted in terms of section 46 Section 32 (c)	Number of requests for access: a) refused in full b) refused partially c) number of times each provision of the Act was relied on to refuse access in full or partially Section 32 (d)	Number of cases in which the periods stipulated in section 25 (1) were extended in terms of section 26 (1) Section 32 (e)	Number of internal appeals lodged with the relevant authority b) number of cases in which as a result of an internal appeal access was given Section 32 (f)	Number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 Section 32 (g)	Number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 Section 32 (h)	Other Information - on
Gauteng					(a) (b) (c)		(a) (b)			
1. City of Johannesburg	08/03/05	(70)	(55)	(0)	11 (1) (1)	(2)	(0)	(0)	(0)	
KwaZulu-Natal										
1. eThekweni Metropolitan	14/04/05	(10)	(5)	(0)	(0) (0) (0)	(1)	(0)	(0)	(0)	
2. City of uMhlatuze	24/01/05	(9)	(8)	(0)	(0) (1) (0)	(0)	(0)	(0)	(0)	
Western Cape Province										
1. City of Cape Town	30/03/05	(40)	(18)	(0)	(5) (4) (12)	(1)	(2)	(0)	(0)	



Section 4

Chapter 9 Institutions

Institution	Date Submitted	Number of requests for access received Section 32 (a)	Number of requests for access granted in full Section 32 (b)	Number of requests for access granted in full in terms of section 46 Section 32 (c)	Number of requests for access: a) refused in full b) refused partially c) number of times each provision of the Act was relied on to refuse access in full or partially Section 32 (d)	Number of cases in which the periods stipulated in section 25 (1) were extended in terms of section 26 (1) Section 32 (e)	Number of internal appeals lodged with the relevant authority b) number of cases in which access was as a result of an internal appeal access was given Section 32 (f)	Number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 Section 32 (g)	Number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 Section 32 (h)	Other Information
1. South African Human Rights Commission		(1)	(0)	(0)	(a) (1) (b) (0) (c) (1)	(0)	(a) (0) (b) (0)	(0)	(0)	



Parastatals

Institution	Date Submitted	Number of requests for access received Section 32 (a)	Number of requests for access granted in full Section 32 (b)	Number of requests for access granted in full in terms of section 46 Section 32 (c)	Number of requests for access: a) refused in full b) refused partially c) number of times each provision of the Act was relied on to refuse access in full or partially Section 32 (d)	Number of cases in which the periods stipulated in section 25(1) were extended in terms of section 26 (1) Section 32 (e)	Number of internal appeals lodged with the relevant authority b) number of cases in which access was as a result of an internal appeal access was given Section 32 (f)	Number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 Section 32 (g)	Number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 Section 32 (h)	Other Information
1. Armaments Corporation of South Africa	7/04/05	(5)	(2)	(0)	(a) (1) (b) (1) (c) (1)	(1)	(a) (0) (b) (0)	(0)	(0)	(1) Transferred
2. ESKOM	22/03/05	(23)	(11)	(0)	(5) (5) (0)	(5)	(2) (0)	(0)	(1)	Busy with 5 requests



Other Public Bodies

Institution	Date Submitted	Number of requests for access received Section 32 (a)	Number of requests for access granted in full Section 32 (b)	Number of requests for access granted in full in terms of section 46 Section 32 (c)	Number of requests for access: a) refused in full b) refused partially c) number of times each provision of the Act was relied on to refuse access in full or partially Section 32 (d)	Number of cases in which the periods stipulated in section 25 (1) were extended in terms of section 26 (1) Section 32 (e)	Number of internal appeals lodged with the relevant authority b) number of cases in which as a result of an internal appeal access was given Section 32 (f)	Number of internal appeals which were lodged on the ground that a request for access was regarded as having been refused in terms of section 27 Section 32 (g)	Number of applications to a court which were lodged on the ground that an internal appeal was regarded as having been dismissed in terms of section 77 Section 32 (h)	Other Information
1. National Research Foundation	10/03/05	(0)	(0)	(0)	(a) (0) (b) (0) (c) (0)	(0)	(a) (0) (b) (0)	(0)	(0)	
2. Public Service Commission	14/04/05	(1)	(0)	(0)	(1) (0) (0)	(0)	(0) (0)	(0)	(0)	
3. SA Police Service	04/04/05	(17001)	(14559)	(873)	(80) (120) (200)	(1000)	(2) (0)	(0)	(1)	
4. Central University of Technology Free State	27/01/05	(2)	(1)	(0)	(1) (0) (0)	(0)	(0) (0)	(0)	(0)	
5. Airports Company of South Africa	15/03/05	(4)	(4)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
6. Land Claims Commission	14/03/05	(18)	(12)	(0)	(3) (3) (0)	(0)	(0) (0)	(0)	(0)	
7. City of Johannesburg (Pty) Ltd	5/04/05	(3)	(3)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
8. Government Communication and Information Service	14/04/05	(0)	(0)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
9. South African Secret Service	22/04/05	(0)	(0)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
10. Magistrates Commission	28/04/05	(16)	(7)	(0)	(1) (4) (0)	(0)	(0) (0)	(0)	(0)	
11. Council for Social and Industrial Research (CSIR)	4/05/05	(1)	(0)	(0)	(1) (0) (0)	(0)	(0) (0)	(0)	(0)	
12. South African National Road Agency	5/05/05	(5)	(0)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
13. South African Diamond Board	5/05/05	(1)	(1)	(0)	(0) (0) (0)	(0)	(0) (0)	(0)	(0)	
14. Telkom SA	5/05/05	(3)	(0)	(0)	(1) (2) (3)	(1)	(0) (0)	(0)	(0)	



4. Conclusion

From the Commission's assessment of its empirical evidence on PAIA, it is of the view that there is a need for the development of more awareness programmes to advance the public's understanding of PAIA. While the section 10 Guide is a tool to enable the general public to use PAIA, for this to be useful, the public need first to be made aware of the right to access to information. The Commission is also mindful of the fact that there is the need to brief information officers and deputy information officers of public bodies on their duties in terms of the Act. These two activities will be the main programmes pursued by the PAIA Unit of the Commission in the current financial year.





Section 5: Annexures



