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## South African Human Rights Commission

Questionnaire Response: Best practices that link anti-corruption measures  
with the realization and protection of human rights

*Submission to the Office of the High Commissioner for Human Rights,  
November 2015*

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*With regard to concrete measures to link anti-corruption efforts with the realization and protection of human rights, please provide, where applicable:*

**1) Examples which show how anti-corruption efforts can be effectively complemented through the use of human rights standards, methods and mechanisms:**

South Africa boasts a unique human rights and constitutional framework. Enshrined in Section 32 of the Constitution is the right of access to information, which extends to both public and private bodies. This right is further enabled through the Promotion of Access to Information Act, 2 of 2000 (PAIA). The right of access to information is considered key in the fight against corruption. On the one hand, and as pointed out by Alasdair Roberts, access to information laws promote democratic values of openness and accountability, which deters corruption:

Access laws play an important role in reducing corruption within government institutions. By making available information about procurement processes and successful bids, access laws make it more difficult for officials to engage in unfair contracting principles.<sup>1</sup>

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<sup>1</sup>Alasdair, R., 2002. Access to Government Information: An Overview of Issues, in: Neuman, L. (Ed.), Access to Information: A Key to Democracy. The Carter Center.

On the other hand, access to information laws also provide a means through which to challenge corruption, by enabling citizens to question the spending and allocation of state budgets.

The South African Human Rights Commission (SAHRC) is mandated by the Constitution of the Republic of South Africa (the Constitution) to promote and protect human rights in South Africa. It is currently bestowed with an additional mandate under PAIA to promote and monitor the implementation of this Act. In fulfilment of these responsibilities, the SAHRC has established a dedicated PAIA Unit which monitors compliance with the Act, trains all spheres of government on their responsibilities under the Act, and assists persons wishing to make an access to information request.

In conjunction with the SAHRC's complaints handling mechanism (as gazetted), the PAIA Unit handles complaints regarding access to information, which can often involve issues of whistleblowing and corruption. In matters taken on by the SAHRC (see question 3 below), the SAHRC investigates allegations, and takes steps to remedy where violations of human rights have been found, including by approaching the courts and preparing adverse findings' reports.

**2) Examples where national human rights institutions (NHRIs) identified corruption as a cause of human rights violations and effective remedial measures taken;**

In 2013, the SAHRC's PAIA Unit held a conference on Business and Transparency, where corruption in South Africa was raised as a key concern. Notable collusion cases were mentioned, including the findings of the Competition Commission in 2013 regarding the collusion of bread prices between the major bread retailers. This case is particularly important to understand within a human rights framework, as the collusion most directly affected the poor, and their right to food security (as protected under section 27 of the Constitution). Also of significance is the fact that the bread collusion was exposed through a whistleblower.

Recognising the significance of the behaviour of the private sector in the realisation of human rights, the SAHRC adopted Business and Human Rights as its thematic focus area for the 2014/2015 year.<sup>2</sup> As part of the activities undertaken during the year, the SAHRC produced a comprehensive research report which aimed to document the work of the

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<sup>2</sup> Note that the SAHRC has adopted this thematic focus area for the 2015/2016 period in order to continue the work of the institution in this important area of human rights.

SAHRC with regard to the focus area. One of the key recommendations of the report regarded the need to implement principles of open contracting in the award and tender of contracts by government to private companies, for corruption oftentimes occurs in the maladministration of contracts. This is particularly important in instances where private companies are contracted to fulfil basic services and socio-economic rights.

**3) Examples which show how the work of national anti-corruption agencies (ACAs) and NHRIs can be interlinked, substantively, structurally and organizationally (such as existing memoranda of understanding; other formal working relations; designated human rights/anti-corruption focal points);**

In accordance with the SAHRC's Complaints Handling Procedure, the SAHRC refers matters to other bodies which may be more suitable to deal with the issue at hand. Where matters arise concerning corruption, it may be referred to the Office of the Public Protector, the Special Investigations Unit, or the Asset Forfeiture Unit. In some instances, the SAHRC may work together with another body in the investigation of a complaint where there may be a clear human rights overlap.

**4) Examples of engagement with regional and international human rights mechanisms that brought about change in anti-corruption efforts;**

The SAHRC regularly engages with regional and international human rights structures. The SAHRC's PAIA Unit has historically engaged with the African Commission on Human and Peoples' Rights in the drafting of the Model Law on Access to Information in Africa.

**5) Examples of the incorporation of human rights considerations in self-assessment of implementation of the United Nations Convention against Corruption;**

The SAHRC was not involved in the drafting or finalisation of South Africa's self-assessment under the United Nations Convention Against Corruption.

**6) Examples of successful human rights litigation, or of investment disputes or civil law cases where human rights arguments played a decisive role, in corruption cases;**

In the matter of the South African Association of Personal Injury Lawyers v Health and Others, heard at the Constitutional Court, Judge Chaskalson stated that:

“Corruption and maladministration are inconsistent with the rule of law and the fundamental values of our Constitution. They undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they will pose a serious threat to our democratic State.”

At paragraph 223 of the Shaik judgement of the same matter, it is stated that:

“The seriousness of the offence of corruption cannot be overemphasised. It offends against the rule of law and the principles of good governance. It lowers the moral tone of a nation and negatively affects development and the promotion of human rights. As a country we have travelled a long and tortuous road to achieve democracy. Corruption threatens our constitutional order. We must make every effort to ensure that corruption with its putrefying effects is halted. Courts must send out an unequivocal message that corruption will not be tolerated and that punishment will be appropriately severe.”

This is a landmark judgement which clearly articulates the relationship between corruption and the non-realisation of human rights. The concerns of corruption are reflected in the National Development Plan Vision 2030 of South Africa, which incorporates numerous anti-corruption provisions under the maxim “zero tolerance for corruption”. Part of the work of the SAHRC will be to monitor the implementation of this national policy, and assess the extent to which the anti-corruption strategies it employs can serve to promote human rights and open democracy in South Africa.

- 7) Good practices for safeguarding human rights while combatting corruption, in particular with regard to: a) the criminalization of corruption (e.g. illicit enrichment), b) the detection and investigation of corruption, c) the prosecution and judicial proceedings (including suo motu powers) and d) in the recovery of illicit assets;**

N/A

**8) Good practices for the protection of victims, witnesses, reporting persons, anticorruption activists, whistleblowers and other persons involved in the fight against corruption which explicitly build on human rights standards;**

Within South Africa, the Protected Disclosures Act (26 of 2000) was signed into law together with PAIA. Together, both are considered integral to the realisation of the right of access to information in South Africa. While the SAHRC receives complaints regarding the treatment of whistleblowers, the SAHRC has also engaged in the process of legislative reform surrounding the Protected Disclosures Act. In 2014, the SAHRC provided comments to the Department of Justice and Correctional Services on the draft Protected Disclosures Amendment Act. In this submission, the SAHRC noted a number of possible constitutional and human rights concerns with the amendments, namely with regards to the rights to freedom of expression, access to information, freedom and security of the person, the right to fair labour practices, and just administrative action. The SAHRC provided the Department with recommendations to strengthen the draft legislation in line with the Bill of Rights and relevant international human rights standards.

**9) Good practices for securing the independence and enhancing the effectiveness of ACAs which draw upon the United Nations Paris Principles and the practice and modalities followed for strengthening the independence and effectiveness of NHRIs (eg the International Coordinating Committee of NHRIs; its peer review process; sharing of substantive and administrative approaches to work);**

N/A

**10) Any other issues relevant to the scope of this study, including for instance information on the use of indicators for measuring the negative impact of corruption on human rights or the correlation between corruption and human rights violations and vice versa.**

N/A