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Effectiveness of National Human Rights Institutions in Advancing Good Governance: A comparative study of South Africa and Nigeria

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Abstract

Constitutionalism is central to achieve good governance in Africa, and the role of National Human Rights Institutions (NHRIs) in this regard is affirmed in Article 26 of the African Charter on Human and Peoples' Rights and other laws. The South African Human Rights Commission (SAHRC) and the Nigerian National Human Rights Commission (NHRC) have 'A' status accreditation which suggests that both institutions are substantially in compliance with the Paris Principles. However, there remains the issue of whether the 'A' status reflects their viability or otherwise in reality. Through the lenses of legislative framework, qualification and appointments, financial autonomy and the nature of their recommendations, this article examines the ability of both institutions to effectively perform their functions towards the achievement of good governance. Thus, using doctrinal and comparative law methodologies, this article finds that while NHRC falls short in terms of legislative framework and other indicators like financial autonomy, appointment and dismissal, the SAHRC relatively meets the standard of the Paris Principle though with challenges. Although the Paris Principles provides that ordinary legislation is acceptable legal framework, such is not sufficient in the context of Nigeria. Therefore, for ordinary legislation to be regarded as sufficient, the context in which an NHRI operates should be considered. Also, arguments have been made for NHRI's financial autonomy, it is posited that what is achievable in reality is relative financial autonomy not absolute financial autonomy. On recommendations, judicial decisions including the South African Human Rights Commission v Agro Data held SAHRC's recommendations as non-binding. This article however argues that distinction needs to be drawn between recommendations requiring performance of an act as means to an end, and recommendations determining rights and obligations, as while the former should be binding, the latter may be non-binding to prevent usurpation of judicial powers.

Keywords: Constitutionalism, Good governance, NHRIs, NHRC, Paris principles, SAHRC

INTRODUCTION

There are different perspectives to the meaning of good governance including that it is a public administration process that prioritises the interest of the public and requires the collaboration of the state and its institutions, the citizens, civil society and other stakeholders.[1] From a human rights perspective, the United Nations Office of the High Commissioner for Human Rights posits that good governance means public institutions' effective management of systems and resources for the common good, where human rights and the rule of law are respected, protected and fulfilled.[2] To achieve good governance, a human rights-based approach is essential as good governance and human rights are 'mutually reinforcing'.[3]

Central to the achievement of good governance is constitutionalism which concerns limitation of state powers and the existence of mechanisms to ensure enforceability of the limitations.[4] A constitution which is the primary compass to determine a state's constitutionalism[5] sets the foundation to institutionalise the core elements of constitutionalism including protection of fundamental rights and freedoms, the fulfilment of which National Human Rights Institutions (NHRIs) are important.[6]

Since the 1990s, many African countries have established NHRIs in compliance with the African Charter on Human and Peoples' Rights which requires states to have national institutions with mandate to promote and protect human rights.[7] NHRIs play key role in upholding accountability, respect and protection of human rights at the domestic level.[8] However, the fact that NHRIs are creations of the states which are primary duty bearers of human rights obligations and primary violators puts NHRIs in delicate position, and where not adequately protected by law, their independence, credibility and legitimacy may be undermined.[9] Thus, effectiveness of NHRIs in any country is dependent on the legal framework, political structure and the level of consolidated democracy.[10]

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[1] Yu Keping, 'Governance and Good Governance: A New Framework for Political Analysis' [2018] FJHSS 1.

[2] United Nations Office of the High Commissioner for Human Rights 'About Good Governance' <https://www.ohchr.org/en/good-governance/about-good-governance > accessed 18 August 2025.

[3] UN Office of the High Commissioner for Human Rights ' Good Governance Practices for the Protection of Human Rights' (2007) <https://www.ohchr.org/sites/default/files/Documents/Publications/GoodGovernance.pdf> accessed 18 August 2025.

[4] Charles Manga Fombad, 'Post-1990 Constitutional Reforms in Africa: A Preliminary Assessments of the Prospects for Constitutional Governance & Constitutionalism' in Alfred G Nhema & Paul Tiyambe Zeleza (eds), *The Resolution of African conflicts* (Ossrea 2008) 179 ; J Waldon, 'Constitutionalism: A Skeptical View' (2010) <https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1002&context=hartlecture> accessed 17 March 2024; Varun Chhachhar & Arun Singh Negi, 'Constitutionalism-A Perspective' (2009) < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527888 > accessed 18 August 2025.

[5] Morris Kiwinda Mbondenyi & Tom Ojienda, 'Introduction to and Overview of Constitutionalism and Democratic Governance in Africa' in Morris Kiwinda Mbondenyi & Tom Ojienda (eds), *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (2013) 3 < https://africanliberty.org/wp-content/uploads/Book%20on%20Constitutionalism%202013.pdf > accessed 18 August 2025.

[6] Charles Manga Fombad (n 4)181 - 182. Other elements of constitutionalism are separation of powers, independent judiciary, the control of constitutionality of laws, the control of amendment of the constitution and existence of institutions supporting democracy. Fombad however noted that these core elements are flexible and can change as better means to achieve a limited government and citizens' protection are devised, and that in any case, the respect for human worth and dignity is central.

[7] African Charter on Human and Peoples Rights, art 26; African Commission on Human and Peoples' Rights Resolution on Granting Observer Status to National Human Rights Institutions in Africa ,1998; Christof Heyns & Magnus Killander,'Compendium of key human rights documents of the African Union' (PULP 2022) 385.

[8] Bonolo R Dinokopila, 'Beyond paper-based affiliate status: National human rights institutions and the African Commission on Human and Peoples Rights' [2010] 1 AHRLJ 25.

[9]Abigail Stander, 'Chapter 9 Institutions' < https://openbooks.uct.ac.za/uct/catalog/download/25/32/1275?inline=1 > accessed 18 August 2025; Karin Sundstrom, 'National Human Rights Institutions in Africa: Design and Effectiveness' a Development Dissertation Brief to the Expert Group for Aid Studies (2022) < https://eba.se/wp-content/uploads/2022/06/DDB_2022_05_Sundstr%C3%B6m.pdf > accessed 18 August 2025.

[10]Charles Manga Fombad, 'Introduction' in Charles Manga Fombad(ed), *Compendium of Documents on National Human Rights Institutions in Eastern and Southern Africa* (PULP 2019) 1.

It is against this background that this article examines the NHRIs in South Africa and Nigeria to assess their ability to perform their roles in furthering constitutionalism and human rights towards good governance. Although both countries' political histories are different, as while South Africa experienced apartheid,[11] Nigeria experienced military rule,[12] and these experiences influence their perceptions and culture of human rights, accountability for human rights abuses is considered important to redress past and present injustices in both countries. Also is differing political structures, while South Africa is quasi-federal, Nigeria is federal with implications on the status of NHRIs. The state of democracy and good governance in both countries are different as South Africa's democracy is more advanced than that of Nigeria,[13] and according to the Worldwide Governance Indicators, Nigeria has consistently been below average from 2012 to 2022. Even though South Africa's performance is better than Nigeria's, the 2022 report shows South Africa's decline in certain areas such as regulatory quality which moved from 64.45% in 2012 to 44.34% in 2022 and effectiveness of government which was 60.66% in 2012 but declined to 48.11% in 2022.[14] Notwithstanding these contextual differences, both countries practice constitutional democracy, the NHRIs in both jurisdictions subscribe to the Principles Relating to the Status of National Institutions (Paris Principles),[15] and NHRIs in both countries are accredited 'A' status which means they have substantially complied with the Paris Principles.[16] Consequently, the fact that both institutions are accredited 'A' status raises the question of whether the accreditation based on the Paris Principle is a matter of formality or that the specific context of an NHRI is considered before being accredited. Thus, even though South Africa and Nigeria have different political history, the facts that both of their NHRIs operate in constitutional democracy, and both are given 'A' status necessitate an assessment of the ability of the NHRIs in both countries to achieve good governance. To therefore assess NHRIs in both jurisdictions, this article is divided into four parts. Part one is the introduction while part two discusses NHRIs, models, features, and their functions. Part three analyses the character of the NHRIs in both countries using the indicators of legislative framework, financial autonomy, appointment and dismissal and nature of recommendation to assess the ability of the NHRIs to effectively perform their functions in protecting and promoting human rights towards the achievement of good governance, and part four concludes the article.

NHRIs, models, features, and functions

According to the United Nations Centre for Human Rights, an NHRI is a body '…established by a Government under the constitution, or law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights…'[17] Across jurisdictions, NHRIs generally possess these features but in five different models namely:

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[11] Edwin Makwati, 'The South African Human Rights Commission' in Charles Manga Fombad (n 10) 646.

[12] Etebom John Monday, 'The Long Years of Military Rule in Nigeria: A Blessing or A Curse' [2021] 11 JPAG 71 < https://www.macrothink.org/journal/index.php/jpag/article/view/18355/pdf > accessed 18 August 2025.

[13] Olatomiwa Olasunkanmi Aborisade & Olabode John Omotosho, 'The Challenge of Democratic Governance in Nigeria: A Religio-Philosophical Appraisal' (2021)1 < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850715> accessed 18 August 2025; Charles Manga Fombad, 'An overview of NHRIs in Eastern and Southern Africa' in Charles Manga Fombad (n 10) 5 where it was stated that South Africa's is Roman-Dutch. This is therefore different from that of Nigeria whose legal tradition is founded on the English common law.

[14] Daniel Kaufmann & Aart Kraay, 'Worldwide Governance Indicators' (2023) <https://www.worldbank.org/en/publication/worldwide-governance-indicators/interactive-data-access> accessed 20 July 2025.

[15] Principles Relating to the Status of National Institutions (The Paris Principles) < https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris > accessed 18 August 2025; United Nations General Assembly resolution 48/134, 20 December 1993; United Nations Commission on Human Rights resolution 1992/54; Charles Manga Fombad, (n 13) 8. The Paris Principles are principles adopted by National Human Rights Institutions at an international workshop held in Paris in 1991 which set out standards that aid in the effective performance of their obligations in protecting and promoting human rights. The Paris Principles have six core elements namely, broad mandate and competence which are based on recognised human rights standards, autonomy, independence, pluralism, adequate investigative powers and adequate resources.

[16] <https://ganhri.org/membership/> accessed 18 August 2025.

[17] United Nations Centre for Human Rights, 'Handbook on Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights' <https://www.ohchr.org/sites/default/files/Documents/Publications/training4en.pdf> accessed 18 August 2025.

- Human rights commissions;
- Ombudsman institutions;
- Hybrid institutions;
- Consultative/advisory institutions; and
- Institutes and centres.[18]

Thus, regardless of nomenclature, where an institution is created by the constitution, legislation or decree and has the mandate to protect and promote human rights such will be regarded as an NHRI. Consequently, for South Africa and Nigeria, the South African Human Rights Commission (SAHRC) and the National Human Rights Commission (NHRC) respectively fall in this category.

It is pertinent to mention that some scholars opined that aside the SAHRC, NHRIs in South Africa include other institutions whose functions are directly or indirectly linked to human rights like the Commission for Gender Equality.[19] However, based on the fact that these other institutions[20] lack broad mandate to promote and protect human rights, it is submitted that they cannot be regarded as NHRIs though their functions relate to human rights and accountability.[21] That these other institutions in South Africa are not NHRIs aside the SAHRC is affirmed by the United Nations Centre for Human Rights' definition of NHRI,[22] the Paris Principles[23] and the fact that these other institutions do not subscribe to the Paris Principles. Also, NHRIs belong to regional[24] and international bodies[25] specifically for NHRIs, and are accredited as such.[26] Thus, an NHRI properly so called should be recognised and accredited by these bodies.

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[18] Charles Manga Fombad, (n 13) 7.

[19] N Barney Pityana, 'National Institutions at Work: The Case of South African Human Rights Commission' Kamal Hossain *et al* (eds), *Human Rights Commission and Ombudsman Offices: National Experiences throughout the World* (KLI 2000) 627; SO Nnamani, 'Institutional Mechanisms for Human Rights Protection in Nigeria: An Appraisal' < https://www.ajol.info/index.php/naujilj/article/view/82393/72548 > accessed 18 August 2025. N Barney Pityana, in categorising human rights institutions in South Africa adopted a broad approach by stating national human rights institutions in South Africa include the Public Protector, South Africa Human Rights Commission, Commission for Gender Equality, the Youth Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, Auditor-General, Electoral Commission, Independent Broadcasting Authority, the Commission for Restitution of Lands and the Truth and Reconciliation Commission; Karin Sundstrom, 'National Human Rights Institutions in Africa: Design and Effectiveness' < https://eba.se/wp-content/uploads/2022/06/DDB_2022_05_Sundstr%C3%B6m.pdf >accessed 18 August 2025) also adopts a broader approach in categorising national human rights institutions. However, Charles Manga Fombad (n 13) 7 did not categorise other institutions like the Commission for Gender Equality as NHRIs despite that they are given specified mandate that relates to human rights.

[20] Constitution of the Republic of South Africa Act 108 1996, (South African Constitution) s 182(1), 185, 187, 190 & 192; Public Protector Act 23 1994, s 6 (4), (5), (7) & 7; It is therefore submitted that the Commission for Gender Equality established by South African Constitution, s 181(1(d) & 187 and the Commission for Gender Equality Act 39 1996, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities established by South African Constitution, s 181 (1)(c) & 185 and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act 19 2002, and other institutions apart from the South African Human Rights Commission (SAHRC) are not national human rights institutions properly so called. In the case of Nigeria, aside the National Human Rights Commission, the Public Complaints Commission established by the Public Complaints Commission Act 31 1975, and other institutions cannot also be regarded as national human right institutions. Perusal of the constitutional and statutory mandates of these other institutions shows that they are not given broad mandate to protect and promote human rights like SAHRC for South Africa and NHRC for Nigeria.

[21] Charles Manga Fombad (n 13) 8; Paris Principles 'Competence and responsibilities' para 2 requires an NHRI to have a broad mandate in protecting and promoting human rights.

[22] n 18 as above.

[23] n 15 as above.

[24] The Network of African National Human Rights Institutions (NANHRI) < https://www.nanhri.org/history-and-constitution/ > accessed 18 August 2025.

[25] The Global Alliance of National Human Rights Institutions (GANHRI) <https://ganhri.org/membership/ > accessed 18 August 2025.

[26]< https://ganhri.org/membership/> accessed 18 August 2025. SAHRC and NHRC are both accredited as A status.

NHRIs serve as checks to prevent government's repression and to promote society's transformation into a just society.[27] Though the Paris Principles provides standards to assess NHRIs, this article uses the benchmark of 'character' of an NHRI excluding other two benchmarks of 'mandate' and 'public accountability' which were developed by the International Council on Human Rights Policy and the Office for the United Nations High Commissioner for Human Rights[28] pursuant to the Paris Principles.[29] Excluding the benchmarks of 'mandate' and 'public accountability' as bases of assessment in this article is because the indicators of legislative framework, financial autonomy, criteria, appointment, dismissal, and the nature of recommendations used for the analyses in this article fall under the benchmark of 'character'.

SAHRC and NHRC's ability in promoting human rights towards good governance

Assessing the ability of the SAHRC and NHRC to effectively perform their functions in ensuring protection of human rights towards the achievement of good governance is done through the lens of 'character' of the NHRIs which includes legislative framework and the nature of their recommendations/directives.

LEGISLATIVE FRAMEWORK

SAHRC is a creation of the Constitution of the Republic of South Africa Act 108 of 1996 (South African Constitution)[30] complemented by statutes.[31] SAHRC is part of the chapter 9 institutions 'supporting constitutional democracy'[32] and operates under fundamental principles of independence, impartiality and non-interference.[33] Under the South African Constitution, other organs of state are obligated to through legislative and other measures assist and protect SAHRC in ensuring its independence, impartiality, dignity and effectiveness.[34]

NHRC on the other hand is not a creation of the constitution but of ordinary legislation[35] and has little or no constitutional safeguards like the SAHRC, and this poses some challenges. For example, NHRC's existence and functions can easily be altered by a repeal or an amendment of the legislation that established it which only requires simple majority of legislative votes,[36] unlike a constitutional amendment that requires a rigorous process.[37] Also, institutions created to perform functions across the federation may enjoy some level of legitimacy across the country when created in a constitution than those created by ordinary legislation alone.[38]

Of particular importance is the precarious position of NHRC in view of its absence in the Constitution of the Federal Republic of Nigeria of 1999 (Nigerian Constitution). This raises the question of the legislative competence of the federal legislature to 'enact' the National Human Rights Commission Act of 1995 as amended (NHRC Act) for the whole federation, when the issue of 'NHRC' is neither in the exclusive legislative list nor in the concurrent legislative list, therefore a residual matter. In fact, the NHRC is not

[27] C Murray, 'The Human Rights Commission *Et Al*: What is the Role of South Africa's Chapter 9 Institutions?' [2009] PER < https://www.saflii.org/za/journals/PER/2006/10.html > accessed 18 August 2025.
[28] International Council on Human Rights Policy and Office of the United Nations High Commissioner for Human Rights 'Assessing the Effectiveness of National Human Rights Institutions' (2005) < https://www.ohchr.org/sites/default/files/Documents/Publications/NHRIen.pdf > accessed 18 August 2025).
[29] n 28 above, 11 - 23.
[30] South African Constitution, s 181(1)(b).
[31] South African Human Rights Commission Act 40 2013 (SAHRC Act); Promotion of Access to Information Act 2 of 2000 (PAIA), s 83 & 84; Promotion of Equality and Prevention of Unfair Discrimination Act 4 2000 (PEPUDA), s 25(5(a) & 28.
[32] n 30 as above.
[33] South African Constitution, s 181(2) & (4).
[34] South African Constitution, s 181 (3).
[35] National Human Rights Commission Act of 1995 amended by the National Human Rights Commission (Amendment) Act, 2010 (NHRC Act).
[36] Constitution of the Federal Republic of Nigeria of 1999 (Nigerian Constitution), s 56(1) & (2).
[37]Nigerian Constitution, s 9.
[38] Charles Manga Fombad (n 13) 11.

specifically mentioned in any part of the Nigerian Constitution despite its significant role in Nigeria's constitutional democracy regarding human rights protection and promotion.[39] NHRC is not listed among federal bodies established in section 153 of the Nigerian Constitution. Item 60 of the exclusive legislative list in part I, second schedule to the Nigerian Constitution which provides for the establishment and regulation of authorities for the federation makes no mention of the establishment of an authority/body to promote fundamental human rights contained in chapter iv of the Nigerian Constitution.

This legal *status quo* suggests the reason NHRC's work focuses on the federal government and its agencies with little or no attention paid to states and local governments and their agencies.[40] In fact, absence of the NHRC in the exclusive and the concurrent legislative lists in the Nigerian Constitution means that the issue of the establishment of NHRI in Nigeria is a residual matter, thus states can also enact laws to create their own NHRI as the federal legislature does not have exclusive legislative competence to enact laws on NHRI for the whole federation. This questions the legitimacy of the NHRC to address human rights issues for the whole federation, and gives opportunity for multiplicity of laws, methods and approaches regarding NHRI in Nigeria if states' legislatures exercise their legislative power to enact law establishing NHRI for their respective states.

Also, where different states enact laws establishing their respective 'NHRIs', there will be multiplicity of NHRIs in Nigeria, and recognition of such states' 'NHRIs' in international bodies like the Global Alliance of National Human Rights Institutions will be problematic. The intention of the drafters of the NHRC Act is for the NHRC to perform its functions across the federation not a part, and the establishment of the NHRC by only ordinary legislation without specific provision in the Constitution which settles the question of the National Assembly's legislative competence to exclusively or concurrently enact law on NHRI or human rights generally for the whole federation[41] enables legal uncertainty which is not healthy for the NHRC to effectively perform its functions across board noting that the NHRC is important for the protection of human rights in Nigeria.

It may be argued that the NHRC Act is an existing law by virtue of section 315 of the Nigerian Constitution, thus, the NHRC Act applies to the whole federation of Nigeria automatically. However, the fact that a law enacted by the federal legislature is an existing law does not automatically mean that the National Assembly has the legislative competence to enact such law for the whole federation if the issue the law addresses is

[39] Nigerian Constitution, Parts I and II of the Second Schedule ; National Human Rights Commission Report 2015 <https://www.nigeriarights.gov.ng/files/publications/NHRC_at_20_Report-Final_draft_2nd_December_2015.pdf > accessed 18 August 2025). The National Human Rights Commission (NHRC) was created in 1995 during the military regime of late General Sanni Abacha by Decree 22 of 1995 and took effect as an existing law deemed enacted by the National Assembly pursuant to the Nigerian Constitution sec 315. The fact that NHRC is neither created nor mentioned in the Nigerian Constitution by which powers are divided between the three levels of government is problematic for NHRC whose powers to hold states and local governments to account can be challenged where it exercises its powers in that regard. A similar challenge confronted the investigative panel constituted by then President Olusegun Obasanjo pursuant to the Tribunal of Inquiry Act of 1966 to investigate past human rights abuses for the whole federation. In *Fawehinmi v Babangida* (2003) FWLR (Pt. 146) 835 879, General Babangida challenged the jurisdiction of the investigative panel to carry out its functions for the whole federation, and the Supreme Court of Nigeria held that the Tribunal of Inquiry Act of 1966 though an existing law cannot apply to the whole of the federation. Consequently, the function of the investigative panel cannot apply to the whole federation. This is simply because the issue of constituting a tribunal of inquiry is neither in the exclusive nor concurrent legislative lists and therefore a residual matter which is within the exclusive legislative competence of the states. This apparently informed why states still invoke their powers under their respective Tribunal of Inquiry laws to investigate human rights abuses in their states despite existence of the NHRC.

[40] NHRC Act, s 5 provides for the NHRC to function in respect of the whole federation but this cannot be implemented in practice in view of the identified constitutional challenge. This affects NHRC's broad mandate and ability to act when human rights violations are perpetuated by state and local governments.

[41] Oluwatosin Senami Adegun 'Nigeria's African Charter Act: The Question of the National Assembly's Exclusive Legislative Competence to Enact for the Nigerian Federation' (17 February 2025) < https://africlaw.com/2025/02/17/nigerias-african-charter-act-the-question-of-the-national-assemblys-exclusive-legislative-competence-to-enact-for-the-nigerian-federation/ > accessed 19 August 2025.

a residual matter. If the federal law is regarding an issue that is residual, such law cannot have automatic application to the states without the states' legislatures domesticating such laws. Another means is that if there is an existing law enacted by the federal legislature on a residual matter, for such law to have automatic application to the whole federation, such law needs be included in the category of existing laws in section 315 (5) of the Nigerian Constitution as done in the case of the Land Use Act which is a federal law on a residual matter and applies to the whole federation by virtue of section 315(6) of the Nigerian Constitution. Thus, that the legislative competence of the National Assembly to enact NHRC Act for the federation is yet to be challenged does not mean there is no potential for such legal challenge, and it shows that there is need for a deliberation on the issue for the legal uncertainties to be addressed.

The worrisome legal framework for NHRC was also evident in the manner investigative panels were constituted following protests for the eradication of the Special Anti-Robbery Squad (SARS) and the human rights abuse at Lekki toll gate in Lagos Nigeria by the military. While the NHRC set up independent investigative panel[42] to investigate human rights violations committed by SARS, some state governors like Lagos state constituted *ad hoc* tribunal of inquiry pursuant to the Tribunal of Inquiry Law[43] to carry out the same mandate.[44] This is unlike South Africa where the SAHRC not only investigates and challenges the national government for human rights violations, it does the same for provincial and municipal governments.[45]

For the analysis of the legal framework of NHRC, it is therefore submitted that establishing NHRIs by mere legislation should not automatically translate to compliance with the Paris Principles to the extent of granting 'A' status like the case of NHRC. The structure and context of each country should be investigated to determine the sufficiency or otherwise of the legislative framework for its NHRIs. In the case of Nigeria, establishing NHRC by mere legislation with no constitutional provision creating NHRC like the case of SAHRC is not sufficient and it is a challenge to the legitimacy of the NHRC in performing its functions across all levels of government in Nigeria. As indicated, there is legal uncertainty regarding the competence or otherwise of the NHRC to perform its functions across all levels of government and the whole federation, and this uncertainty needs to be settled with requisite constitutional amendment.

The inadequate legal framework has limited the scope of NHRC as states and local governments are in reality excluded from its purview. Although this challenge is being managed through friendly collaboration with state governments which in certain instances include NHRC as members of states' constituted panels. This is however not sufficient and constitutional amendments including amendment of section 153 of the Nigerian Constitution to include NHRC and inclusion of NHRC in the exclusive legislative list or at least the concurrent legislative list to ensure legal certainty regarding the fact that its establishment and powers uniformly apply to the whole federation are required to address this challenge.

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[42] <https://www.ohchr.org/sites/default/files/documents/issues/racism/cfis/res4721/NHRI-National-Human-Rights-Commission-of-Nigeria_0.pdf> accessed 18 August 2025.

[43] Tribunal of Inquiry Law 2015, s 1. In most cases, the tribunal of inquiry is set up by the same institution perpetuating the violation which should not be the case in an ideal situation where the NHRC is recognised as the body set up for the whole federation to ensure accountability and protection of human rights. NHRC does not have the level of legitimacy which the SAHRC has.

[44] Lagos State Judicial Panel of Inquiry on Restitution for Victims of SARS Related Abuses and Other Matters <https://lagosstatemoj.org/wp-content/uploads/2021/12/Consolidated-Report-of-the-Judicial-Panel-of-Inquiry-on-general-Police-brutality-cases.pdf> accessed 18 August 2025).

[45] *South Africa Human Rights Commission & Others v Madibeng Local Municipality & Others* 21099/2017 where the SAHRC together with some individuals challenged the non-supply of water to residents in violation of their right to water and got an order which the municipality did not comply with. An order for contempt was subsequently sought which the municipality later sought to rescind <https://www.sahrc.org.za/home/21/files/Rescission%20judgment%20amended%2023.01.2024%20[PBO1644].pdf > accessed 18 August 2025; South Africa Human Rights Commission Report 'Inquiry into Access to Water and the Efficacy of Water Services Authorities with Limpopo Provinces' where SAHRC investigated the issue of inadequate water supply in Limpopo and found failure of municipalities to provide adequate water as violation and issued recommendations in that regard <https://www.sahrc.org.za/home/21/files/Limpopo%20Water%20Report.pdf> accessed 18 August 2025.

Financial independence and funding

It is essential that NHRIs are financially independent and have adequate funding to perform their functions.[46] SAHRC's budget is incorporated in the vote of the Department of Justice and Constitutional Development which is a department in the executive despite Asmal Report's[47] recommendation for parliament budget vote. For NHRC, its budget is also decided by the executive and charged on the consolidated revenue fund of the federation.[48]

The fact that budgets of the SAHRC and the NHRC are determined by the executive makes them vulnerable to executive encroachment on their independence, as there are possibilities for the executive to review the budget downwards, delay payment or that funds released are less than funds budgeted. For example, in the NHRC's report of 2020, it was stated that the sum of ₦ 2 500 000 000 was appropriated in year 2020, but that the sum was reviewed downwards to ₦ 2 250 000 000, of which the sum of ₦ 2 249 999 999. 63 was released.[49] In fact, the NHRC's Executive Secretary in its opening statement in the report appreciated the then President Buhari for increasing the NHRC's budget,[50] and in its 2022 report, NHRC stated '…the commission is highly indebted to the Office of the Vice President…'[51]

In *New National Party of South Africa v the Government of the Republic of South Africa*,[52] the South African Constitutional Court in considering the question of financial independence in relation to the Electoral Commission which is one of the chapter 9 institutions held financial independence to mean access to funds reasonably required to discharge its functions under the law. Also, that financial independence does not mean the Electoral Commission will set its own budget as setting the budget for the Commission is the function of the parliament. Parliament must therefore consider what the Commission reasonably requires in the light of other national interests.[53]

The decision of the South African Constitutional Court reflects the contentions on the issue of financial independence for chapter 9 institutions in general and the SAHRC in particular. By the Court's decision, it appears the possibility of SAHRC having its own budget is overly ambitious, and the maximum protection the law offers in protecting its financial independence is for parliament to set its budget. This therefore suggests that absolute financial independence cannot be achieved and what is achievable is relative financial independence. The Court's decision that parliament takes responsibility for the Commission's budget is in line with the Asmal Report's recommendations that parliament should set budgets of chapter 9 institutions instead of leaving it to the executive. This may be because of the oversight function which parliament exercises pursuant to section 181(5) of the South African Constitution.

The Court also upheld the power of the Electoral Commission to collaborate with government departments for assistance to perform its functions which also means that SAHRC can do same provided its independence is not tampered with. This recognises the power of chapter 9 institutions which the SAHRC

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[46] Paris Principles 'Composition and guarantees of independence and pluralism' para 2.

[47] South African Parliament's Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions' report of 2007 (Asmal Report) 20 <https://www.sahrc.org.za/home/21/files/Reports/Report%20of%20the%20Ad%20Hoc%20Committee%20of%20chapter%209.%202007.pdf> accessed 17 August 2025.

[48] NHRC Act, s 12(2).

[49] National Human Rights Commission Annual Report of 2020 <https://www.nigeriarights.gov.ng/files/publications/Annual%20Report/annual-report-2020-human-right-website.pdf > accessed 17 August 2025.

[50] n 49 above, iv. Relying on the executive for funds creates a master servant relationship between the executive and the NHRIs which situation is worse in the case of Nigeria where the NHRC's independence is not a constitutional guarantee like the case of SAHRC.

[51] National Human Rights Commission Report of 2022 <https://www.nigeriarights.gov.ng/files/publications/Annual%20Report/2022%20ANNUAL%20REPORT%20FINAL%20FINAL%20docx%20(1).pdf > accessed 16 August 2025.

[52] CCT9/99 (CC).

belongs in using their discretion to take measures addressing their challenges provided such measures are within the confines of the law and do not undermine their independence. Therefore, for NHRIs' financial autonomy, the acceptable standard is for parliament to set their budget.

The above notwithstanding, pending when parliament sets SAHRC's budget, the possibility of executive control through budgeting is curbed through inclusion of information on budgetary challenges in the annual report submitted to South African National Assembly for consideration.[54] In the case of NHRC, it submits reports on its activities to the president and the National Assembly[55] of which the deliberations on the reports are not made public for citizens to be aware and engage unlike in South Africa where deliberations on such reports are public.[56]

Flowing from the lack of financial independence is inadequate funding to execute their broad mandate.[57] For NHRC, aside from appropriated fund, it has power to create another 'fund' where moneys from the federal government, its revenue[58] and donations are paid.[59] NHRC can accept gifts provided there is no condition placed on such gifts that is contrary to its functions,[60] and it can also borrow and invest its funds.[61] NHRC Act also established a separate Human Rights Fund,[62] however, a review of its 2020 – 2022 reports revealed these separate funds are not operational. In the case of SAHRC, the South African Constitution and SAHRC Act do not expressly provide for SAHRC's power to seek external funds, borrow, or invest. Both SAHRC and the NHRC largely depend on the government for funding which is not adequate to perform their functions. This challenge is however tackled through receipt of funds from external donors like international non-governmental organisations, and external funding of special projects which should continue to be allowed, provided receipt of private or external funding will not compromise their independence.[63] The external funding should however be secondary source of funding not primary, thus, the governments should prioritise the SAHRC and the NHRC and ensure that they are adequately funded to enable them effectively perform their functions in strengthening constitutional democracy through human rights protection and promotion in both countries.

Criteria, appointments, and dismissal

The criteria, procedures of appointment and dismissal are important to determine independence of NHRIs.[64] On criteria for appointment, out of 16 members of the NHRC's governing council, only four are required to have experience in human rights.[65] Inclusion of representatives from ministries of justice,

[54] South African Constitution, s 181(5); SAHRC Act, s 18(1). The parliament can take further action against government department that fails to perform its duties pursuant to its oversight function on the executive arm of government pursuant to South African Constitution, s 55(2).

[55] NHRC Act, s 17. The fact that the NHRC is required to submit report to the president is not in line with the benchmark which requires NHRIs to be answerable only to the parliament.

[56] South African Human Rights Commission Annual Performance Plan 2022 – 2023 <https://pmg.org.za/committee-meeting/34910/> accessed 15 August 2025.

[57] Paris Principles 'Composition and guarantees of independence and pluralism' para 2 which requires that NHRIs need adequate funding to function. Specifically, that the funding should enable it to be independent of the government and not subject to government's financial control.

[58] n 48 above, para 7.5; n 50 as above. It was stated that though the NHRC is not a revenue generating body it generates revenue through the sale of standard bid documents. In year 2020, it generated N 1 079 000.00 whereas in its 2022 report it generated N 319 950.00 which is minimal compared to its enormous tasks. Tasking an NHRI to generate revenue has the potential to shift its focus from its main functions, revenue generation should not be part of the requirement as it was not set up to generate revenue.

[59] NHRC Act, s 12.

[60] NHRC Act, s 13.

[61] NHRC Act, s 14.

[62] NHRC Act, s 15. Moneys received from all levels of government, national and multinational organisations and public and private organisations doing business in Nigeria are to be paid into the Human Rights Fund.

[63] n 49 above, para 7.2; n 56 as above.

[64] Paris Principles 'Composition and guarantees of independence and pluralism' paras 1 & 3.

[65] NHRC Act, s 2(2) & 7(1).

foreign affairs and internal affairs suggests NHRC is being treated like an extension of the executive[66] of which parameters used in selections are vague.[67] This gives room for politicisation of appointments and the governing council existing at the pleasure of the president. According to NHRC's report of 2020, there was no governing council in year 2020, consequently, NHRC's affairs were under the supervision of the presidency through the office of secretary to the federal government,[68] which is an aberration. For SAHRC, its eight commissioners are required to have knowledge and record of commitment to human rights,[69] and gender and ethnic diversity are considered in appointments to SAHRC.[70]

On appointment procedure, for SAHRC's commissioners, a National Assembly's committee[71] nominates candidates which the National Assembly then approves by a resolution passed with simple majority votes, and the approved candidates will be recommended to the President for appointment.[72] In Nigeria, the procedure is the other way round where members of the NHRC's governing council are first appointed by the President for subsequent senate's confirmation.[73] In reality, this procedure gives room for the senate to only rubberstamps the President's appointments especially when the President's political party controls the senate.

There is therefore possibility for politicisation of appointments in both countries especially where the president's political party dominates the parliament thereby resulting in cadre deployment.[74] In addressing

[66] n 64 above, para 1(e) provides that where government departments are included their representatives should only participate in deliberations in an advisory capacity which NHRC Act, s 2(2)(b) seeks to comply with by providing that representatives of federal ministries of justice, foreign affairs and internal affairs be included in the governing council but do not have voting powers in the council. However, inclusion of representatives from public service has potential to undermine the independence of the NHRI and gives room for possible conflict of interest which is not ideal in Nigerian context. SAHRC Act, s 5(1)(b) is preferred which excludes persons in public service and those with political affiliations.

[67] NHRC Act, s 2(2) & (3). The only qualification that applies to all members of the governing council is that they be of persons of proven integrity which is not enough. There is no criterion for human rights experience for the position of chairperson where he is a retired justice or judge, the representatives from the ministries of justice, foreign affairs and internal affirms, the three representatives of registered human rights organizations, the two legal practitioners, the three representatives of print and electronic media and the representative of organized labour. Also, the parameters to choose them out of so many are vague thereby their selections are at the pleasure of the president.

[68] n 49 above, para 1.4.1. It is however a surprise that despite NHRC Act, s 3(1) by which members of the governing council are to serve for 4 years renewable once, the governing council was non-existent in year 2020 which was the covid-19 period when human rights violations were prevalent. This suggests possibility of removals of members of the governing council which members of the public have no information about. Even the NHRC executive secretary who is responsible for the day-to-day administration of NHRC has a term of 5 years renewable for another term, however, under NHRC Act, s 7(2), he holds office on terms and conditions as the president may determine under. This is unlike commissioners in SAHRC which by SAHRC Act, s 5(2) & (4) their term of office is determined by the National Assembly and does not exceed seven years but can on expiration be renewable for another term. There is no report of SAHRC where it is said that the presidency takes charge of administering SAHRC for lack of commissioners and there is no possibility for that to happen in view of the constitutional protection.

[69] SAHRC Act, s 5(1)(a)(ii) & (iii).

[70] South African Constitution, s 193(2) & (6) provides that consideration be given to gender and ethnic diversity in appointments. Similar provision is absent under NHRC Act though NHRC Act, s 2(2)(g) provides that two members of the governing council shall be women with sufficient experience in human rights issues. For Nigeria, it is presumed that there is no mention of consideration of ethnic diversity because there is a general federal character principles provided by the Nigerian Constitution, s 14(3), (4) & 318(1) which address the issue of ethnic diversity in composition of government institutions and other public bodies.

[71] South African Constitution, s 193(5)(a). It is important to note that the committee is proportionally composed of all political parties represented in the National Assembly. The National Assembly committee is required to be proportionally composed of all members of the political parties in the Assembly; South African Constitution, s 193 (5)(a) & 193 (1), (4) & (5); By the South African Constitution, s 59(1)(a) & 193(6), the civil societies are involved in the nomination process.

[72] South African Constitution, s 193(5).

[73] NHRC Act, sec 2(3)(b).

[74] Edwin Makwati (n 11) 657; NHRC Act, s 8(1) provides that NHRC can employ directly or through transfer or deployment members of the public service which in the case of SAHRC, the SAHRC Act, s 5(2) & (4) by implication prohibits such as it has tendency to undermine the independence of the SAHRC and blur the clear cut distinction between NHRI and usual public service.

this challenge, the South African National Assembly adopts an appointment procedure[75] where the Portfolio Committee on Justice and Correctional Services in charge of appointments of SAHRC's commissioners issues public invitation for individuals, organisations and civil societies to nominate candidates, and the nominations are subsequently published on the parliament's website for public comments on suitability of the candidates. Nominated candidates are then subjected to screening and verification of their qualifications.[76] Interviews are conducted publicly, and shortlisted candidates are sent to the National Assembly for approval, and on obtaining simple majority votes, the candidates are recommended to the president for appointments.[77] The process of appointment of SAHRC's commissioners is commendable which Nigeria should borrow from.[78]

With regard to dismissal, the only grounds for dismissal of SAHRC's commissioner are misconduct, incapacity or incompetence,[79] while that of a member of NHRC's governing council are unsound mind, bankruptcy, compromise with creditors, conviction for felony or any offence involving dishonesty, or when found guilty of serious misconduct in relation to his duties.[80] However, definitions of the grounds and the details of procedure to follow to arrive at such findings are not provided which makes them susceptible to arbitrary removal.[81]

To therefore prevent arbitrary removal, the South African Constitutional Court in *Speaker of the National Assembly v Public Protector & Others; Democratic Alliance v Public Protector and Others*[82] relying on *Economic Freedom Fighters v Speaker of the National Assembly (EFF II)*[83] emphasised the need for the South African National Assembly to adopt a procedure to remove heads of chapter 9 institutions which include SAHRC. Also, that definitions of the three grounds of removal provided in the National Assembly rules do not constitute additional grounds to those provided by the Constitution, and are therefore constitutional.[84] The Court further held that to ensure fairness of the process, the rights of the office bearer to fair hearing and legal representation during the panel and enquiry stages must be protected.[85] The removal procedure in South Africa is a good practice at preventing arbitrary removal which Nigeria's parliament should follow by amending NHRC Act and adopting rules of procedure in that regard.

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[75] <https://www.sahrc.org.za/index.php/sahrc-media/news-2/item/221-nominations-for-sahrc-commissioners#:~:text=Nominations%20must%20contain%20the%20full,contact%20details%20including%20physical%20address%2C> accessed 18 August 2025.

[76] Parliamentary Monitoring Group 'Nominations & Applications: Appointment of six (6) Commissioners to the SAHRC' < https://pmg.org.za/call-for-comment/1309/> accessed 18 August 2025.

[77] Guidelines on Appointment of Commissioners to the South African Human Rights Commission <https://static.pmg.org.za/160922sahrc.pdf > accessed 18 August 2025.

[78] The thoroughness of this process ensures that persons appointed are qualified not political appointees. In Nigeria, appointments are made by the president without involvement of civil society organisations and other members of the public. Thus, no opportunity for the public to assess the suitability of individuals appointment for the positions.

[79] South African Constitution, s 194 (1)(a).

[80] NHRC Act, s 4(1).

[81] NHRC Act, s 4(1). For NHRC Act, the president would have made the removal before the senate gets involved to confirm same, and in practice the senate never challenged such removal while for SAHRC the parliament starts and concludes the removal process and upon parliament's simple majority vote adopting the removal, the president is bound to remove the person; Constitution of South Africa, s 194 (1) (b) and (c), 194 (2)(b) & 194 (3).

[82] Case CTT 257/21 & CCT 259/21 2022 ZACC 1.

[83] 2017 ZACC 47.

[84] According to the Constitutional Court, to remove an office bearer, a member of the National Assembly gives notice by way of motion to initiate removal proceedings, the Speaker ensures that the motion is in compliance with the National Assembly rules adopted for that purpose. When the motion is found complaint, the speaker refers the motion to an independent panel appointed to conduct preliminary assessment of the issue and determine whether there exists *prima facie* case. The panel issues its report which includes recommendations, reasons, and minority views. The National Assembly considers the panel's report and where it resolves that there should be an enquiry, the issue is referred to a National Assembly's committee to conduct formal enquiry. After the enquiry, the committee issues a report which contains its findings and recommendations, and where it is recommended that the office bearer be removed, the removal is put to the National Assembly to vote, and in the case of SAHRC, where there are simple majority votes, such commissioner must be removed from office.

[85] n 83 as above.

It is submitted that the South African Constitutional Court's decision setting standards for removal of office bearers of any chapter 9 institutions which include the SAHRC is a good development as it gives further details to the grounds of removal and set the parameters for such removal to be valid. The importance of heads of chapter 9 institutions is affirmed by the fact that the Court placed their removal procedure on the same pedestal as the procedure to remove the South African President. This is good practice which Nigeria should take a cue from.

Also, section 4(3) of the NHRC Act and section 8(1)(b) of the SAHRC Act provide for procedures to fill any vacancy. In the case of NHRC, where there is any vacancy consequent upon such removal, the president can appoint another to complete the term of his or her predecessor, and such appointment is not required to be subject to confirmation of the senate. This is different in the case of SAHRC where appointment to fill any vacancy must go through the same process as a fresh appointment.

Non-binding nature of recommendations/directives

Upon the completion of an investigation, the SAHRC presents its findings and provides recommendations. It is required to communicate these outcomes to both the complainant and any individuals or institutions involved in the investigation.[86] Where report of investigation contains findings or recommendations which require an institution, organisation or executive authority to take any step, such must within 60 days after becoming aware of the findings or recommendations respond in writing to SAHRC informing it about its intention to take any step.[87] However such recommendations are not binding.

NHRC on the other hand has power to make determination as to damages or compensation[88] or make recommendation which is binding and shall upon application in writing to the high Court be enforced by the Court.[89] However, NHRC's power to hear complaints and issue compensation was successfully challenged in *Chairman and Members of the Special Investigative Panel of the NHRC on Oil Spills & Environmental Pollution & Others v Total E & P (Nig.) Ltd*[90] where the Court of Appeal of Nigeria held that the power of NHRC through its constituted investigative panel to hear and determine complaints, and to order compensation or damages to victims is *ultra vires* and usurpation of the power of the Court. According to the Court, NHRC not being a Court cannot issue a remedy, and that any law that gives it power to do so is unconstitutional and a violation of the respondent's right to fair hearing.

It is submitted that though the Court was right in holding the power of NHRC to award damages or compensation as *ultra vires*, the Court did not make proper distinction between NHRC's power to investigate human rights abuses generally including investigation of human rights abuses in the oil and gas sector through public hearings, and to make consequent recommendations; and its power to make determination and award remedy.[91] The fact that NHRC cannot make a determination and give a remedy does not diminish its power to conduct investigations and issue recommendations in that regard.

[86] SAHRC Act, s 18(3) & (5).
[87] SAHRC Act, s 18(4).
[88] NHRC Act, s 5(j) & 6(e).
[89] NHRC Act, s 22.
[90] (2012) LPELR-53151 (CA).
[91] Paris Principles 'Additional principles concerning the status of commissions with quasi-jurisdictional competence' para (1)(a)(c)&(c) only specifies bindingness of decisions where parties reach amicable settlement but not otherwise. The decision of the Court of Appeal of Nigeria is therefore in line with this Paris Principle as NHRIs are in principle not required to hear complaint and make binding decisions. However, it is submitted that the Court should still have noted and upheld the power of NHRC to conduct investigations into human rights abuses arising from any facts including oil exploration though its findings and recommendations are not binding. This is more as the judicial system is adversarial and judges are not required to conduct investigations to arrive at their decisions, thus, the power of NHRC to investigate is important in obtaining facts which can then form the basis for seeking judicial remedy for victims.

Also, the supposed binding nature of SAHRC's recommendations/directives was successfully challenged in *South African Human Rights Commission v Agro Data CC & Anor*[92] where SAHRC sought Court's declaration to the effect that its directive or recommendation issued to protect the rights of access to water and dignity is binding. The Mpumalanga division of High Court of South Africa held that SAHRC's directives are not binding on parties against which they are made. The Court distinguished the Constitutional Court's decision in *Economic Freedom Fighters v Speaker of the National Assembly (EFF)*[93] which held the public protector's remedial action after investigation binding except successfully challenged in Court.[94]

The Court held that SAHRC does not have the power like the Court to make final determination as to whether certain action or behaviour is constitutional or to penalise illegal behaviour and order persons or institutions to take certain actions.[95] According to the Court, the type of control the SAHRC has over government and the general public is cooperative control which is facilitative and proactive by using advice,[96] persuasion and dialogue to get the desired result not coercive control which is reactive and imposed by unilateral or forced decision.[97] SAHRC's directives or recommendations are therefore not unilaterally binding but serve as means to taking necessary steps to seek redress in a Court of law. The South African Supreme Court of Appeal affirmed the decision of the high Court in *The South African Human Rights Commission v Agro Data CC & Another.*[98]

It is agreed that unlike the South African public protector who has the power to take remedial action, neither the South African Constitution nor the SAHRC Act gives the SAHRC such power. Thus, the SAHRC's recommendation issued after an investigation which finds violations and direct specific steps to be taken are not binding in themselves but are means to further action including institution of action in Court. This is so because it will be an afront to the rule of law for the recommendations of SAHRC to be considered binding when there is no reference to such power in the South African Constitution and other laws. The Court's decision upholding SAHRC's recommendations that the respondents should share information with the complainant to aid resolution of the water issue suggests that while such directives aimed at facilitating resolution are enforceable, those findings that identify violations and propose remedies are not inherently binding. Instead, they serve as a framework for addressing concerns, whether through judicial channels or alternative dispute resolution mechanisms.

The Gauteng division of the High Court in South Africa followed this reasoning in *Afriforum v South African Human Rights Commission & Others; Klerk NO and Others v South African Human Rights Commission*[99] where the Court held that SAHRC has no constitutional or legislative power to make

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[92] 2022 ZAMPMBHC.
[93] 2016 3 SA 580 (CC).
[94]Bradley Slade, 'Clarifying the Power of the South African Human Rights Commission to Take Steps to Redress the Violations of Human Rights: A discussion of South African Human Rights Commission v Agro Data CC [2022] ZAMPMBHC' 58 <https://hdl.handle.net/10520/ejc-obiter_v44_n2_a11 > accessed 18 August 2025; Kathy Govender & Paul Swanepoel 'The Powers of the Office of the Public Protector and the South African Human Rights Commission: A Critical Analysis of SABC v DA and EFF v Speaker of the National Assembly 2016 3 SA 580 (CC)' < http://www.scielo.org.za/pdf/pelj/v23n1/17.pdf >accessed 18 August 2025.
[95] n 92 above, paras 34 – 38.
[96] n 92 as above.
[97] South African Constitution, s 184(2)(a) & (b); SAHRC Act, s 13(1)(a) and 13(3)(a) & (b)..
[98] (2024) ZASCA 121 (15 August 2024).
[99] 2024 ZAGPJHC 1630. The Court held that SAHRC does not have the power to make definite decisions which are binding. That its powers under section 13(3) of the SAHRC Act is to investigate after which it forms an opinion whether to proceed to court or not to seek remedy, and that its findings are more or less an opinion which any member of the society can hold. According to the Court, SAHRC has no power under the law to make definite decision, and SAHRC being a creation of statute with powers provided by statute where its act falls outside the provisions of the law, such act cannot be lawful. It is submitted that because SAHRC is not a court which decides on rights and obligations, its opinion or decision on issues should not be final but be means to an end. Though non-bindingness of its decision is a challenge, however, if SAHRC takes further steps in seeking remedy in appropriate forum like the court, the challenge of its recommendations being ignored will be overcome.

definitive decision as to whether or not contravention of section 10 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 has occurred. Also, that the opinion which SAHRC is empowered to make pursuant to section 13(3) of the SAHRC Act is to determine whether proceedings be brought in that regard in a competent Court.[100]

The non-binding nature of the recommendations/directives of SAHRC and the NHRC may compromise their efficacy and diminish the perceived significance of their functions. In the case of SAHRC, this challenge is being overcome through exercise of its power to institute an action to secure remedy,[101] submission of *amicus* briefs in Court, monitoring compliance of Court orders,[102] and provision of financial assistance to victims in seeking remedy. In certain instances, collaboration with civil society organisations to exert pressure on perpetrators of violations, 'name and shaming' and inclusion of non-compliance in reports to National Assembly for consideration are helpful.[103] It is important for there to be a distinction between recommendation which provides directives as means to an end, and recommendation that give determination of rights and obligations, as while the former should bind the parties, the latter may not be binding to avoid the usurpation of the judicial powers of the Court.

CONCLUSION

Human rights protection is essential to achieve good governance and the SAHRC and the NHRC are important institutions to safeguard human rights. Although both the SAHRC and the NHRC have made much progress since their establishment, much still needs to be done. Thus, having assessed the SAHRC and the NHRC, it is evident that even though both institutions are accredited 'A' status, they do not have the same ability to effectively perform their functions. Aside from the recommendations provided in the discussion on each indicator, it is important to emphasise that in the case of Nigeria, the effectiveness of NHRC's legislative framework needs to be analysed in the context of the Nigerian Constitution and Nigeria's federal system. If this is done, it will be seen that, establishing the NHRC by ordinary legislation without more is insufficient in Nigeria's context. There is need for constitutional amendment to specially provide for the NHRC in the Nigerian Constitution, and to bring legal certainty to the legislative competence of Nigeria's National Assembly to enact the NHRC Act for the whole federation.
Also, the issue of financial autonomy of the SAHRC and the NHRC needs to be addressed, and the government in both countries should ensure that both institutions are adequately funded to enable them to perform their functions effectively without political influence. In general, stakeholders and the public must be engaged to enable SAHRC and NHRC to function effectively.[104]

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[100] It is submitted that the Court was right on interpretation of the power given to SAHRC by the constitution and statute, consequently, findings and recommendations following an investigation should be means to an end and not end in themselves.
[101] *Qwelane v South African Human Rights Commission and Another* 2022 ZACC 22 (CC).
[102] *SAHRC & 19 Others v Madibeng Municipality, MEC for Local Government & Human Settlement, Minister of Water and Sanitation & Minister of Health* (NGHC) 21099/17 where the SAHRC challenged failure of the municipality to provide water for the community at Klipgat C area in Madibeng Local Municipality and the court ordered interim relief for there to be water supply. In monitoring the interim reliefs, the SAHRC found that the municipality did not comply and the SAHRC instituted a contempt proceeding against the municipality; South African Human Rights Commission Revised Strategic Plan 2020 – 2025 16 <https://www.sahrc.org.za/home/21/files/SAHRC%20Revised%20Strategic%20Plan%202020-25.pdf> accessed 18 August 2025, and it was reported that *South African Human Rights Commission and Others v Minister of Home Affairs: Naledi Pandor and Others* 2014 ZAGPJHC 198 the Gauteng's High Court of South Africa ruled declaring unconstitutional detention of immigrants at the Lindela repatriation centre and the Court ordered the Minister of Home Affairs and the Bosasa (Pty) Ltd to submit quarterly reports to the SAHRC on steps taken to comply with the order and provide particulars of person(s) detained at the Lindela for a period beyond 30 days.
[103] South African Constitution, s 181(5); SAHRC Act, s 18(1) & (2).
[104] Charles Manga Fombad 'National Human Rights Institutions in Eastern and Southern Africa: Lessons and Prospects for the Future' in Charles Manga Fombad (n 10) 890 - 898. In all, though SAHRC still faces some challenges in fulfilling its functions in holding government accountable and protect human rights, it is evidence of good practice when compared to NHRC. Nigeria therefore needs to review its laws especially the Nigerian Constitution to further ensure independence of the NHRC.