

**CLARIFYING THE POWER OF THE SOUTH
AFRICAN HUMAN RIGHTS COMMISSION TO
TAKE STEPS TO REDRESS THE
VIOLATION OF HUMAN RIGHTS: A
DISCUSSION OF**

***South African Human Rights Commission v Agro
Data CC [2022] ZAMPMBHC 58***

1 Introduction

Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution) establishes six institutions having the express purpose of “strengthen[ing] constitutional democracy” (s 181(1) of the Constitution). Murray (“The Human Rights Commissions *et al*: What Is the Role of South Africa’s Chapter 9 Institutions?” 2006 9 *PELJ* 122–147) suggests that the two purposes of the Chapter 9 institutions are: 1) “checking government”, and 2) “contributing to the transformation of South Africa into a society in which social justice prevails”. Two of the institutions that contribute significantly to these purposes are the Public Protector (ss 182–183 of the Constitution) and the South African Human Rights Commission (s 184 of the Constitution). Each of these institutions has a vitally important role to play in South Africa’s constitutional democracy. In strengthening constitutional democracy, the Public Protector is to investigate conduct in state affairs or in public administration that is allegedly improper, report on such conduct, and “take appropriate remedial action” (s 182(1)(c) of the Constitution). The South African Human Rights Commission (the Commission) is to advance and protect human rights within South Africa. The Commission can investigate the observance of human rights, and “take steps to secure appropriate redress where human rights have been violated” (s 184(2)(b) of the Constitution).

In *Economic Freedom Fighters v Speaker of the National Assembly* (2016 (3) SA 580 (CC)) (*EFF*), the Constitutional Court confirmed that remedial action ordered by the Public Protector, if appropriate, would be binding on the parties against whom it is made. Remedial action can therefore not simply be ignored but must be implemented. A party who is of the view that the remedial action is not rational should approach a court to have the remedial action set aside. On the strength of this decision, the Commission has continually argued that its directives on steps to secure redress, following an investigation where it is found that human rights have been violated, are similarly binding on the parties against whom they are made (see South African Human Rights Commission *Final Report of the Gauteng*

Provincial Inquiry Into the Sewage Problem of the Vaal River (2021) par 116).

The argument that the directives of the Commission are binding was also advanced by the Commission in *Solidarity v Minister of Labour* ([2020] 1 BLLR 79 (LC)) (*Solidarity*). In this decision, *Solidarity* argued that the findings and recommendations in the Commission's Equality Report (South African Human Rights Commission *Equality Report 2017/2018*) were binding. The Equality Report was, however, a research report and did not contain recommendations to redress the violation of human rights. Therefore, as the issue in *Solidarity* was not about directives issued to redress the violation of human rights, but about findings made after research conducted by the Commission, the court did not rule on whether directives to remedy the violation of rights were binding.

It is for this reason that the recent decision of the High Court in *South African Human Rights Commission v Agro Data CC* ([2022] ZAMPMBHC 58) (*Agro Data*) is important, as it provided the High Court with the opportunity to consider whether the directives issued by the Commission to remedy the violation of human rights can be considered binding on the parties. In this matter, the Commission's directives to address the violation of labour tenants' right of access to water had not been implemented, prompting the Commission to approach a court for an order that the directives were binding.

This case note proceeds as follows. First, it sets out the powers of the Commission in terms of the Constitution and the South African Human Rights Act (40 of 2013) (the Act), before turning to a discussion of *Agro Data* and considering the implications that this decision may hold for the power of the Commission, specifically as far as it relates to taking "steps to secure redress where human rights have been violated".

2 Powers of the South African Human Rights Commission

The South African Human Rights Commission is established in terms of section 184 of the Constitution. In terms of section 184(1), the Commission has the mandate to promote, protect and monitor the realisation of human rights in South Africa. In terms of its promotional mandate, the Commission is obliged to "promote respect for human rights and a culture of human rights" (s 184(1)(a)). In terms of its protection mandate, the Commission is obliged to "promote the protection, development and attainment of human rights" (s 184(1)(b)). In terms of the Commission's monitoring mandate, it is obliged to "monitor and assess the observance of human rights in the Republic" (s 184(1)(c)). The Commission also generally structures its programmes and operations along the lines of these three mandates (South African Human Rights Commission *Annual Report 31 March 2020* 14–15).

To enable the Commission to fulfil the mandates as set out in section 184(1), it is empowered in terms of section 184(2) to investigate and report "on the observance of human rights" (s 184(2)(a)). It is empowered to "take steps to secure appropriate redress" where it has found that human rights

have been violated (s 184(2)(b)). The Commission is further empowered to “carry out research” (s 184(2)(c)), and “to educate” (s 184(2)(d)). The Act further describes the power of the Commission. Most notably, section 13 of the Act confers various powers and places various obligations on the Commission. For instance, the Commission can investigate any violation of human rights, either on its own initiative or after receipt of a complaint, and can assist the complainant or other persons affected to secure appropriate redress for the human rights violation (s 13(3)(a) of the Act). The assistance may include financial assistance to approach a competent court for redress. The Commission can also “bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or group or class of persons” (s 13(3)(b) of the Act). In section 15 of the Act, the Commission is provided with broad investigatory powers for purposes of exercising its section 13 powers, and with the power to enter, search and attach goods in section 16.

In light of its statutory powers, the Commission follows a particular methodology before it exercises its power to “take steps to secure appropriate redress” in terms of section 184(2)(b) of the Constitution. In this regard, there seems to be a coupling of the power of the Commission to “investigate and to report on the observance of human rights” in section 184(2)(a) with its power to take steps to secure redress in terms of section 184(2)(b). The Commission investigates the violation of human rights, and after concluding its investigation, which may at times involve a public hearing, it ordinarily releases a report (on the violation), which often includes the steps to be taken to secure redress for the violation as reported. A recent example is the report of the Commission following a joint enquiry with the Public Protector into unrest in the Alexandra township. The unrest, which involved barricading of roads and burning tyres, came as a result of frustration with “severe overcrowding, inadequate service delivery, rampant crime and illegal land occupations” (South African Human Rights Commission *Final Report of the Gauteng Provincial Inquiry Into the Alexandra Township Total Shutdown* (2021) 1). The Commission and the Public Protector held a joint site visit to various areas in Alexandra, as well as a joint public forum, gathering information from the residents of Alexandra, followed by a request for responses from the various state departments. Although the Commission and the Public Protector held a joint inquiry, they published separate reports on the basis of their respective constitutional and statutory powers. In its report, the Commission identified several factors that impede the full realisation of socio-economic rights. These include “improper use of budgets, planning that is not coherent and integrated; skills shortages, high staff turnover, illegal occupation, limited space, extreme overcrowding, high rate of unemployment, non-collaborative working between organs of state” (*Final Report of the Gauteng Provincial Inquiry into the Alexandra Township Total Shutdown* 2, 69). The Commission specifically noted that it would not make findings in relation to each of these identified factors, as experience has shown that these individual findings are not heeded by the relevant organs of state. Instead, the Commission made broader overarching findings to which the implicated state organs would have to respond within 60 days. Most of these required relevant state organs to provide reports containing plans to address the

various shortcomings in the delivery of basic services. For instance, in relation to water, sanitation and refuse removal, the relevant organs of state had to present a plan setting out short- and long-term steps to ensure adequate access to water, sanitation and refuse removal (*Final Report of the Gauteng Provincial Inquiry into the Alexandra Township Total Shutdown 2*). In its report into the Alexandra unrest, the Commission specifically noted the following:

“The Commission’s directives herein are binding on the Respondents. Should any of the parties be aggrieved by the findings and directives of the Commission as contained herein, such a party is entitled to challenge same in court through the process of judicial review.” (*Final Report of the Gauteng Provincial Inquiry into the Alexandra Township Total Shutdown 5, 74*)

However, in 2022 the Commission conducted a follow-up visit to the Alexandra township to determine whether there had been any improvement in the conditions in Alexandra. The Commission noted that nothing much has changed in Alexandra since the release of its report. Importantly, it was reported that

“neither the City [of Johannesburg] nor the provincial government has responded to the [Commission’s] report ... though they were given 60 days in which to do so.” (Mafata “Nothing Has Changed in Alexandra, Says Human Rights Commission” GroundUp (15 February 2022) <https://www.groundup.org.za/article/sa-human-rights-commission-says-nothing-has-changed-alexandra/> (accessed 2022-06-15))

The Commission indicated that if the relevant parties did not respond in due course, it would consider using its subpoena powers.

Although the Commission used its power to monitor and assess the observance of human rights, as granted in the Constitution and the Act, the investigation found a clear violation of human rights, triggering the Commission’s protection mandate, which enables it to “take steps to secure appropriate redress”. In its Revised Strategic Plan 2015–2020 (South African Human Rights Commission *Revised Strategic Plan 2015–2020*), the Commission identified the inadequate implementation of the recommendations of the Commission as a risk in reaching its objective of monitoring, assessing, and reporting on the observance of human rights. The fact that the relevant state organs and other parties often fail to respond to the reports of the Commission, or to implement its recommendations, calls into question the Commission’s ability to execute its mandate effectively to strengthen constitutional democracy generally, and to advance the protection of human rights specifically.

It is for this reason that the decision in *Agro Data* is important as it seemingly clarifies the relative power of the Commission to issue directives.

3 *Agro Data*

3.1 *Facts*

In this matter, the Commission received a complaint from Mosotho on behalf of the occupiers of the De Doorn Hoek Farm to the effect that the respondents were unilaterally placing restrictions on their use of borehole water. After an investigation, the Commission found a *prima facie* violation of the various rights of the occupiers, most notably of the right not to be denied access to water, which is protected by section 6(2)(e) of the Extension of Security of Tenure Act (62 of 1997) and section 27(1)(b) of the Constitution. To remedy the *prima facie* violation, the Commission issued a number of directives. Among other instructions, these directives required the respondents to restore the supply of borehole water within seven days of release of the report, and the parties to engage with each other about water management on the farm. The respondents failed to comply with the directives, prompting the Commission to seek a declaratory order that the Commission's directives issued in terms of section 184(2)(b) were binding.

The Commission argued that the directives flow from its protective mandate, as well as its power in section 184(2)(b) of the Constitution, to take steps to secure appropriate redress in the case where human rights are violated (*Agro Data supra* par 9). The Commission also argued that for redress to be *appropriate* it needs to be binding on the parties; if not, no party against whom a directive has been given would comply and this would detrimentally affect the Commission's ability to strengthen constitutional democracy in South Africa (in *EFF supra* par 71, the Constitutional Court defined "appropriate" remedial action as "effective, suitable, proper or fitting to redress the transgression"). In this regard, the Commission relied extensively on the Constitutional Court's judgment in *EFF*, where the Constitutional Court confirmed that the remedial action of the Public Protector is binding on the parties against whom it is made if it is "appropriate and practicable to effectively remedy" (*EFF supra* par 71) the complaint.

The respondents argued that although the Commission may issue directives, it does not have the "judicial power to issue orders that must automatically be adhered to where it concerns private individuals" (*Agro Data supra* par 20). In this regard, the respondents argued that the duty to provide access to water rests with the State and this constitutional obligation cannot be imposed on a private party. The court seems to have accepted that the primary obligation to provide access to water rests with the municipality, and that private parties would have a duty not to refuse the installation of water supply infrastructure on their property. The question as to whether, and how, the Bill of Rights binds private parties has been, and remains a contested matter (Van der Sijde "Tenure Security Occupiers for ESTA Occupiers: Building on the Obiter Remarks in *Baron v Claytile Limited*" 2020 36 *SAJHR* 74–92; Madlanga "The Human Rights Duties of Companies and Other Private Actors in South Africa" 2018 29 *Stell LR* 359–378 and the cases discussed there). In this regard, it is questionable whether this was the appropriate case for the Commission to take to court.

There are numerous examples where the State has failed to heed the Commission's directives, and it may have been sensible for the Commission to rather institute legal proceedings where the State has failed to implement the directives of the Commission as steps to remedy the violation of human rights.

In considering the question whether the directives of the Commission are binding, the court first considered the position, purpose, and constitutional powers of the Commission. As significant reliance was placed on the *EFF* decision, the court had to differentiate between the powers of the Public Protector as set out by the Constitutional Court and the powers of the Commission as understood by the High Court.

3.2 *The Commission's position, purpose and powers*

The court had regard to the position of the Commission relative to the traditional structures of government. The court noted that the Commission falls outside of the traditional three arms of government, highlighting that the Commission "does not exercise power in the same way" (*Agro Data supra* par 38) as the other branches of government (Murray 2006 *PELJ* 126). In particular, the court mentioned that the Commission, although having some administrative powers, does not have the power to govern. A core purpose of the Commission is to serve as an additional avenue for holding government accountable. It therefore plays an instrumental role in placing a check on the exercise of government power. In placing a check on the exercise of government power, the Commission's power is limited. According to the court, "it cannot conclusively declare government actions to be unconstitutional or illegal, nor can it order the executive to act in a certain way, and it cannot penalise unconstitutional behaviour" (*Agro Data supra* par 38; the statements of the court are strikingly similar to those of Murray 2006 *PELJ* 130, which is not referred to). Instead, the Commission is meant to enter into dialogue with the various organs of state and use advice and persuasion to achieve a desired outcome, which in this case would be addressing the human rights violation identified by the Commission. In this regard, the court relied on a 2000 article written by a Canadian academic (Reif "Building Democratic Institutions: The Role of the National Human Rights Institutions in Good Governance and Human Rights Protection" 2000 13 *Harvard Human Rights Journal* 1–69). The court concluded that the Commission exercises "cooperative control" (Reif 2000 *Harvard Human Rights Journal* 1–69), as opposed to "coercive control", which is able to force a particular action on the part of the State (*Agro Data supra* par 39).

With regard to the constitutional powers of the Commission, the court reasoned that the Commission is "most central in monitoring government's commitment to human rights". In this regard, the court points towards the monitoring mandate of the Commission as seemingly *the* constitutional mandate of the Commission. The court also had regard to the statutory power of the Commission, particularly the power in section 13(1)(a)(i), where the Commission is "competent and obliged" to make recommendations to organs of state where it is "advisable for the adoption of progressive measures for the promotion of human rights" (this section does not refer to making recommendations to private parties). The court also referred to the

Commission's power to investigate the violation of human rights and assist the complainant to secure redress in section 13(3)(a) of the Act. The constitutional and statutory powers also point towards the cooperative control that the Commission exercises over organs of state (*Agro Data supra* par 43). In this regard, the court held that directives of the Commission, issued in terms of section 184(2)(b) of the Constitution, are not binding on the parties against whom they are made.

The reasoning of the court seems to be in line with the sentiments expressed by the *ad hoc* committee under the chairpersonship of Kader Asmal established by the National Assembly to review Chapter 9 and associated institutions. In its report, the committee found that the "Commission is not a court of law and cannot make binding decisions on complaints lodged with it" (Asmal, Dithebe, Johnson, Burgess, Matsomela, Camerer, Smuts, Van der Merwe, Rajbally and Simmons *Report of the Ad Hoc Committee on the Review of Chapter 9 and Associated Institutions* (2007) 168). Klaaren, although indicating that some state organs have considered the directives of the Commission to be binding, states that it is generally understood that these directives are in fact not binding on the relevant parties (Klaaren "SA Human Rights Commission" in Woolman and Bishop (eds) *Constitutional Law of South Africa* (2013) 24C–7; this approach is contrary to the view taken by Govender and 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)" 2020 *PELJ*, who argue that in appropriate circumstances, the directives of the Commission may be binding).

Based on the powers and purpose of the Commission and its position relative to the other branches of government, the court concluded that the Commission does not have the power to issue binding directives, although it would certainly be open to the implicated state organ to implement the directives in addressing a human rights violation. Although this interpretation finds support in the Kader Asmal Report and in the writing of academic authors, it is unfortunate that the court did not differentiate more clearly between the Commission's mandates in order to provide a stronger justification as to why the directives of the Commission are not binding. In certain cases, the Commission monitors and reports on the observance of human rights, which may shed light on a potential human rights violation for the State to take note of and address, where appropriate. In these cases, the Commission does not regard its recommendations as binding (see, especially, the founding affidavit of the Commission in *Solidarity v Minister of Labour supra*). In other cases, the Commission may uncover a human rights violation following a thorough investigation and then issues directives on steps to secure redress (see the reports referred to above). It is in these limited circumstances that the Commission regards its directives as binding. The failure of the court to clearly differentiate between the various mandates and powers of the Commission renders the justification for this particular finding somewhat inadequate.

3.3 *Differentiating between the powers of the Public Protector and the Commission in light of EFF*

As the Commission relied heavily on the *EFF* judgment in arguing that the directives issued in terms of its protective mandate are binding, it is important to consider how the court differentiated between the power of the Public Protector to order binding remedial action, and the power of the Commission to “take steps to secure appropriate redress”.

The court compared the relative powers of the Commission and the Public Protector and their proper position relative to each other. Although the Public Protector and the Commission have some similarities, there are also key differences between the two institutions. According to the court, there is an apparent constitutional hierarchy of Chapter 9 institutions. In this regard, the Public Protector apparently enjoys an “elevated status” (*Agro Data supra* par 46) when compared to the Commission and other Chapter 9 institutions. This elevated status is justified by a number of considerations. The first, rather dubious, reason relates to the fact that the Public Protector is the first institution to be listed in Chapter 9 of the Constitution. This argument was proffered by Govender and Swanepoel (2019 *PELJ*), who, without further explanation or justification, argue that the Public Protector enjoys an elevated status because it is the first institution to be listed in Chapter 9. The second reason relates to the provisions regarding the appointment and removal of the Chapter 9 institution incumbents as regulated in section 193(5) of the Constitution. In terms of section 193(5)(b)(i) of the Constitution, the National Assembly can approve the appointment of the Public Protector (and the Auditor-General) by a supporting vote of 60 per cent of its members, while a simple majority vote is sufficient in the case of the appointment of the commissioners of the Commission in terms of section 193(5)(b)(ii). This latter provision also applies to the appointment of commissioners to all the other commissions in Chapter 9, except for the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Commission), whose appointment process is governed by section 11 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act (19 of 2002). Similarly, higher majorities are required for the removal of the Public Protector than for the commissioners of the Commission in section 194(2) of the Constitution.

It is unclear how the higher majority required for the appointment of the Public Protector (and the Auditor-General) elevates the Public Protector above all the other Chapter 9 institutions. Furthermore, as the grounds for removal in section 194(1) are the same for the Public Protector, the Auditor-General and the commissioners of the various commissions, it is unclear how the removal process elevates the Public Protector above the Commission and other Chapter 9 institutions. The Public Protector, the Auditor-General and the commissioners of the various commissions can only be removed on the grounds of “misconduct, incapacity or incompetence”, supported by the National Assembly with regard to the applicable majorities required after a committee of the National Assembly has found that a ground for removal exists. This means that the removal of the Chapter 9 incumbents

would have to follow the same procedure and be based on the same consideration, although the majorities may differ. Surely, the appointment and removal process, as concerning individuals such as the Public Protector and the Auditor-General and the various commissioners of the various commissions, is to secure the independence and impartiality of the various Chapter 9 institutions, and does not point to a hierarchy of the various institutions. Murray (2006 *PELJ* 127) argues along the same lines and states:

“To secure their independence, the selection of people to office under Chapter 9, with the exception of the commissioners on the CRL Commission, must be by a special majority in the National Assembly and their dismissal likewise requires a special parliamentary majority.”

Furthermore, there is only one Public Protector and one Auditor-General as opposed to several commissioners in the various commissions, which may render it important to protect the independence of an individual person to a higher degree.

The third reason for the apparently elevated status that the Public Protector enjoys relative to the Commission is the “specific function and powers” of each. It is perhaps not entirely appropriate to consider the functions of the Chapter 9 institutions as justification for why one Chapter 9 institution is elevated above the others. All the Chapter 9 institutions have the function of strengthening constitutional democracy, and each plays a unique role in that regard. Furthermore, speaking specifically to the Public Protector and the Commission, it would be disingenuous to suggest that, because the function of the Public Protector relates to addressing improper public administration, it is elevated above the Commission whose function is to establish a culture of human rights – especially in light of the country’s unjust and racist past, where human rights were denied people simply based on their race.

A closer look at the relative powers of the Public Protector and the Commission, in light of the Constitution and relevant legislation, may place either institution in a stronger position in realising its purpose to strengthen constitutional democracy although not elevating one above the other. Both the Public Protector and the Commission derive its powers from the Constitution, and their powers are further regulated by legislation. The court pointed out the differences between the constitutional power of the Public Protector and the Commission respectively. The Public Protector’s power to order remedial action (which the court interpreted as the “direct power to take remedial action” (*Agro Data supra* par 47)) is different from the Commission’s power to take steps (which does not empower the Commission to take or issue actual remedial action or order redress. According to the court, “[t]he wording is purposefully different” (*Agro Data supra* par 47)). Based on this interpretation, the Constitution does not authorise the Commission to take actual steps in the form of directives or remedial action for addressing the human rights violation. Instead, it simply authorises the Commission to take steps in the event that its investigation uncovers a human rights violation.

In relation to the Constitutional Court’s judgment in *EFF* (to the effect that the remedial action of the Public Protector is binding if effective), the court

reasoned that even though the Commission's power is different from the Public Protector's power, that does not mean that the Commission can simply be ignored or that its powers are not binding. However, the court reasoned that even though the Commission is clothed with the power to take steps to secure redress, those steps do not include the taking of actual steps in the form of remedial action or directives. Instead, after the Commission has investigated and determined a violation of rights, it can consider what steps it would take to address the violation. In this regard, the court reasoned that once the Commission has determined that human rights have been violated, it is empowered and can decide which steps it should take to secure appropriate redress. Those steps may include only those steps specifically provided for in the Act, and include assisting a complainant to secure redress by instituting litigation in its own name, by assisting (materially or financially) the complainant to approach a competent court, or by directing the complainant to an alternative forum (ss 13(3)(a) and 13(3)(b) of the Act. The Commission often engages in litigation in its own name to vindicate the rights of people (South African Human Rights Commission *Strategic Plan 2020–2025* 9–12).

The court therefore found that the constitutional power in section 184(2)(b) does not empower the Commission to take direct remedial action or issue directives that are binding on the parties. Instead, the steps referred to in section 184(2)(b) of the Constitution refer to the steps explicitly allowed for in the Act.

4 Concluding remarks

In *Agro Data*, the High Court confirmed that the directives issued by the Commission as steps to secure redress where human rights have been violated in section 184(2)(b) of the Constitution are not in themselves binding. The court's justification for this finding rests, first, on the purpose of the Commission, which is to exercise cooperative control, meaning that the Commission must enter into dialogue and persuade state organs to give effect to the realisation of human rights and remedy any human rights violation. Secondly, the power of the Commission, as described in the Constitution, does not empower the Commission to take direct steps in the form of remedial action or directives to secure redress where human rights have been violated. Instead, the power in section 184(2)(b) is merely an indication that the Commission is empowered to take the steps specifically provided for in the Act. In this regard, the constitutional power of the Commission to take steps to secure redress is distinguishable from the Public Protector's power to take remedial action, even though both the steps and the remedial action follow an investigation and a finding of impropriety or a human rights violation that should be remedied.

The finding of the High Court places the Commission in a slightly weaker position than the Public Protector in its ability to strengthen constitutional democracy, although it does not elevate the Public Protector above the Commission. Although the Commission may not be able to issue binding directives or take binding remedial action where human rights have been violated on the strength of section 184(2)(b) of the Constitution, the Commission continues to play a pivotal role in strengthening constitutional

democracy by effectively using its broad powers to establish a culture of human rights.

The steps that the Commission can take in terms of section 13 of the Act have been used effectively by the Commission to secure redress where human rights have been violated. For example, the Commission has become involved in litigation for the protection of human rights – sometimes as a litigant (*South African Human Rights Commission v Minister of Home Affairs* [2014] 11 BCLR 1352 (GJ); *Qwelane v South African Human Rights Commission* 2021 (6) SA 579 (CC); *Strategic Plan 2020–2025* 9–12), and at other times as a friend of the court (see *Strategic Plan 2020–2025* 9–12). The Commission also monitors the implementation of court orders that seek to remedy the violation of human rights. For instance, in *Minister of Basic Education v Basic Education for All* (2016 (4) SA (SCA) 2), the Supreme Court of Appeal held that every learner is entitled to a textbook. In light of this judgment, the Commission monitors the delivery of textbooks in all provinces (*Strategic Plan 2020–2025* 11).

The Commission further uses its broad powers to establish a culture of human rights in South Africa. This, the Commission achieves by compiling comprehensive reports focusing on particular human rights issues, such as human settlements, water and sanitation (South African Human Rights Commission *Final Report of the Gauteng Provincial Inquiry Into the Sewage Problem of the Vaal River* (2021); South African Human Rights Commission *Access to Housing, Local Governance and Service Delivery* (2015); South African Human Rights Commission *Report on the Right to Access Sufficient Water and Decent Sanitation in South Africa* (2014)), as well as certain cross-cutting human rights issues, such as inequality, the rights of children, and disability (South African Human Rights Commission *Equality Report 2017/2018*; South African Human Rights Commission *Lack of Safety and Security Measures in Schools for Children With Disabilities*; South African Human Rights Commission *Research Brief: The Management of and Rights of Learners at Special-Needs Schools* (2018)).

In this regard, even though the directives that the Commission may make in order to remedy a human rights violation are not binding on the State, the Commission's use of its broad constitutional and statutory powers goes a long way to promote and protect human rights in South Africa. Even though the State is obliged to ensure the dignity and effectiveness of the Commission, it is clear that the State is not always responsive to the Commission's reports and interventions. This may be considered a failure to comply with a constitutional obligation that is directly placed on all organs of state in terms of section 181(3) of the Constitution. Moreover, it is generally important not to lose sight of the intermediary role that the Commission can play in relation to ordinary citizens. The intermediary role that the Commission can play has been noted:

"Prompted by the large number of complaints that the Commission has received about the government's failure to fulfil its obligation to provide a right to basic education, the hearings provided an opportunity for citizens and the government to raise concerns about education. Because hearings like this are generally not adversarial and because the reports drafted by the Commission after previous hearings have credibility, the hearings provide an effective way

of assessing problems and drawing government's attention to them." (Murray 2006 *PELJ* 128)

This intermediary role is essential where it concerns marginalised citizens, who individually may not have the resources to engage with the various organs of state, other than through costly litigation.

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