

A comparative discussion of the South African and Ugandan Human Rights Commissions

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Abstract

At its 52nd Ordinary Session in October 2012, the African Commission on Human and Peoples' Rights presented an award to the Uganda Human Rights Commission for being the best National Human Rights Institution (NHRI) in Africa. This was in recognition of its contribution towards the protection and promotion of human rights. The South African Human Rights Commission came in a close second in this category. The recognition of these two NHRIs as the 'best' in Africa does not necessarily take into account the various differences between them. The purpose of this paper is to assess and reflect on the mandates and functioning of the two NHRIs. The assessment helps to determine the attributes, achievements, strengths, opportunities and challenges of the two institutions – which other NHRIs might learn from. The South African and Ugandan NHRIs are compared against the backdrop of the social, economic, political and historical contexts of the two countries in which they exist. The different challenges and dynamics that these two NHRIs face are discussed, as is how they have affected the realisation of their constitutional and legislative mandates in different ways. It is concluded that despite the challenges, the two NHRIs have achieved and realised some of their mandates in varying degrees and can nevertheless learn from each other's successes and failures – although their relative effectiveness is difficult to determine.

INTRODUCTION

National Human Rights Institutions (NHRIs) are increasingly becoming key players in the protection and promotion of human rights in the countries where they have been established. On 20 December 1993, the United Nations General Assembly unanimously adopted the Principles Relating to

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the Status of National Institutions (the 'Paris Principles').¹ These principles are the principal source of normative international standards relating to the status and functioning of national institutions for the protection and promotion of human rights. The Paris Principles provide many of the basic requisites that NHRIs must have, in order to ensure the fulfilment of their mandates in an independent and effective manner. These requisites include the mandate to (i) promote human rights, (ii) advise governments on human rights protection, (iii) review human rights legislation, and (iv) prepare human rights reports. Receiving and investigating complaints from the public is an optional function. Under the influence of the Paris Principles, national institutions such as the South African Human Rights Commission (SAHRC) and Uganda Human Rights Commission (UHRC) were formed during the 1990s, and NHRIs now play an important role in the protection and promotion of human rights in various countries.

In line with its mission to support the establishment and strengthening of NHRIs, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) – through its Sub-Committee on Accreditation (SCA) – reviews and accredits NHRIs in compliance with the Paris Principles.² The ICC accreditation system has evolved and been strengthened over recent years. It includes: a system by which NHRIs are reviewed every five years; an appeal process for NHRIs to ensure greater transparency and due process; a more rigorous review of each application; more focused recommendations; and wider distribution and greater knowledge of SCA recommendations by NHRIs and other stakeholders.³ The SCA also develops General Observations on interpretative issues regarding the Paris Principles – to guide NHRIs on accreditation and the implementation of the Paris Principles.⁴ Accreditation confers international recognition and protection of the NHRI concerned. There are currently three levels of accreditation, the highest of which is 'A' – a voting member which complies fully with the Paris Principles. Both South Africa and Uganda are A-accredited.⁵

¹ The Paris Principles were initially adopted in 1992 by the UN Commission on Human Rights as 'Principles Relating to the Status of National Institutions'. In 1993 they were adopted by the UN General Assembly through Resolution A/RES/48/134.

² See 'ICC Sub-Committee on Accreditation (SCA)' available at: <http://nhri.ohchr.org/EN/AboutUs/ICCAccreditation/Pages/default.aspx> (last accessed 24 April 2014).

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

The SAHRC was envisaged in Chapter 8 of the 1993 Interim Constitution of South Africa, and was established in 1995 after the enactment of the 1994 South African Human Rights Commission Act,⁶ and was constitutionalised through Chapter 9 of the 1996 Constitution of South Africa.⁷ The Commission has additional powers and functions prescribed by specific legislative obligations in terms of the Promotion of Access to Information Act⁸ and the Promotion of Equality and Prevention of Unfair Discrimination Act.⁹ One of the objectives of its establishment was to provide meaningful support for South Africa's constitutional democracy and open government, as well as to defend and promote the human rights enshrined in the new South African Constitution. With its wide mandate, the SAHRC is also instrumental in promoting South Africa's Bill of Rights – enshrined in Chapter 2 of the Constitution – in addition to ensuring that all state institutions observe fundamental human rights associated with effective service delivery and the socio-economic transformation of the country. The SAHRC is further tasked with the responsibility of ensuring that society at large adheres to the democratic rights and principles contained within the Constitution.

The UHRC was established by article 51(1) of the 1995 Constitution of the Republic of Uganda, in order to protect and promote human rights. It is further operationalised by the Uganda Human Rights Commission Act.¹⁰ The decision to establish a permanent body to monitor human rights in Uganda flowed from the country's violent and turbulent history; a history characterised by arbitrary arrests, detention without trial, torture and brutal repression with impunity on the part of security organs during the pre- and post-independence era. Like most NHRIs, the UHRC has a wide mandate to protect and promote human rights, with specific functions including investigating human rights violations, visiting places of detention, creating human rights awareness, educating and training the public on human rights, recommending to parliament effective measures to promote human rights, and monitoring government's compliance with international treaty obligations.¹¹

⁶ 54 of 1994.

⁷ Constitution of the Republic of South Africa (1996).

⁸ 2 of 2000.

⁹ 4 of 2000.

¹⁰ No 4/1997.

¹¹ Article 52(1) of the Constitution of the Republic of Uganda and s 7(1) of the Uganda Human Rights Commission Act.

In October 2012, the African Commission on Human and Peoples' Rights presented its 25th anniversary award to the UHRC for being the best National Human Rights Institution (NHRI) in Africa.¹² This was in recognition of its contribution towards the protection and promotion of human rights. The SAHRC came in a close second in this category.

An important reason for a comparative study of the South African and Ugandan Human Rights Commissions is that, in terms of comparative research, there are many benefits to be gained from cross-national and cross-institutional studies – including a deeper understanding of how different countries and institutions do things in the context of differing political, cultural and socio-economic circumstances. Moreover, South Africa and Uganda have much in common. Not only are they both transitional societies with a disturbing history of oppression and repression, but in the mid-1990s they also both adopted new constitutions that contained Bills of Rights and established human rights commissions like those compared in this paper.

The purpose of this paper is to assess and reflect on the mandates and functioning of the South African and Ugandan NHRIs. The assessment will help to determine the attributes, achievements, strengths, opportunities and challenges of the two institutions – which other NHRIs might learn from. The paper also highlights the weaknesses of these institutions, the threats they face, and explores how their various roles could be enhanced and how the two countries can learn from each other. Concluding remarks on the relative effectiveness of the South African and Ugandan NHRIs are offered.

THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION (SAHRC)

Constitutional and legislative mandate

As mentioned earlier, the SAHRC was established by Chapter 9 of the 1996 South African Constitution, as one of six 'State Institutions Supporting Constitutional Democracy'.¹³ Its powers and functions are laid down in section 184, to include an obligation to promote respect for human rights and a culture of human rights; to promote the protection, development and attainment of human rights; and to monitor and assess the observance of human rights in the Republic.¹⁴ Under section 184(2), the SAHRC is given the necessary powers (as regulated by legislation) to perform its functions

¹² This was at the Commission's 52nd Ordinary Session held in Yamoussoukro, Republic of Côte d'Ivoire, from 9 to 22 October 2012.

¹³ See: Chapter 9, section 181 (1) of the Constitution.

¹⁴ Section 184 (1).

– which include investigating and reporting on the observance of human rights, taking steps to secure appropriate redress where human rights have been violated, and carrying out research and education.¹⁵

Besides the general mandate to protect, promote, monitor and assess the observance of all human rights, the SAHRC is given a special mandate to monitor the realisation of socio-economic rights. In that regard, the Commission is obliged to obtain information from relevant organs of state on the measures they have taken towards the realisation of the socio-economic rights in the Bill of Rights.¹⁶ This is of critical importance considering South Africa's history which was largely characterised by inequality and injustice, mainly because of a denial of access to socio-economic resources and facilities to the majority of the population.

Section 184(4) of the Constitution provides for additional powers and functions of the Commission to be prescribed by national legislation. Accordingly, the Human Rights Commission Act¹⁷ provides for various matters relating to the SAHRC. In particular, it provides for matters such as the terms of office of members of the Commission,¹⁸ the independence of the Commission,¹⁹ powers and functions of the Commission,²⁰ and investigations by the Commission.²¹ Of particular significance is section 15 of the Act which requires the SAHRC to submit quarterly reports to parliament on any findings in respect of functions and investigations of a serious nature performed or conducted during the period concerned.

It should be noted that the Act provides the Commission with wide powers beyond those conferred by the Constitution. In addition to the promotion of human rights through education and the monitoring and evaluation of human rights, the Commission is enjoined to protect the rights of ordinary people, not only through mediation, conciliation or negotiation, but also through investigation of complaints.²² In performing its investigative function, the Commission is empowered with the legal tools that it requires, such as the power to gather information through subpoenas, entering and searching, and

¹⁵ Section 184 (2).

¹⁶ Section 184 (3).

¹⁷ Act 54 of 1994.

¹⁸ Section 3.

¹⁹ Section 4.

²⁰ Section 7.

²¹ Section 9.

²² Sections 8 and 9.

attaching articles or documents relevant to the investigation concerned.²³

It must be pointed out, however, that the Human Rights Commission Act is now outdated in several respects, as it was promulgated to be consistent with the 1993 interim Constitution. Because the Act predates the 1996 Constitution it does not, for example, mention the Commission's mandate to monitor the progressive realisation of socio-economic rights which is entrenched in the 1996 Constitution – but not contained in the 1993 interim Constitution. That is why (at the time of writing) a Bill²⁴ was before parliament, which was intended to replace the 1994 Human Rights Commission Act. The purpose of the proposed statute is not only to include numerous amendments that have been proposed over the years, but also to bring the existing provisions of the Act in line with the 1996 Constitution.

Achievements and challenges

The achievements and attributes of the SAHRC were aptly captured in the Report of the *ad hoc* Committee on the Review of Chapter 9 and Associated Institutions.²⁵ In its conclusions, the Report pointed out that

²³ Section 9 (2).

²⁴ Human Rights Commission Bill [B5–2013].

²⁵ The Committee was chaired by Kader Asmal and was established by parliament to review the so called Chapter 9 institutions, including the SAHRC. The report (submitted to parliament on 31 July 2007) is available at: <http://www.sahrc.org.za/home/21/files/Reports/Report%20of%20the%20Ad%20Hoc%20Committee%20of%20chapter%209.%202007.pdf>. (last accessed 4 January 2014). Since the tabling of the Asmal report in parliament, one of its recommendations – the establishment of a Unit on Constitutional Institutions and other statutory bodies to be located in the Office of the Speaker – has been effected. In August 2010, the National Assembly Forum and the Speaker approved the Unit – to be known as the Office on Institutions Supporting Democracy (OISD). Its vision is to enhance parliament's oversight over the Institutions Supporting Democracy (ISD), while its purpose is to facilitate and coordinate all engagements between parliament and the ISD, to ensure meaningful engagement and support (see 'Mr Max Sisulu (MP) Speaker of the National Assembly', Parliament of the Republic of South Africa, at http://www.parliament.gov.za/live/content.php?Category_ID=320 (last accessed 25 April 2014)). Other recommendations of the Asmal Report have still not been effected. However, on 20 August 2013, party-level workshops to discuss the report were mooted – ahead of a general workshop of the Rules Committee of the National Assembly (see 'Parliamentary Monitoring Group (PMG), Proposed Workshop on Review of Chapter 9 and Associated Institutions Report; Update on provision for Motions of No Confidence in NA Rules, Composition of NA Programming Committee' available at: <http://www.pmg.org.za/report/20130820-proposed-workshop-review-chapter-9-and-associated-institutions-report-update-provision-for-motions-no-confidence> (last accessed 25 April 2014)).

It appears to the Committee that the Human Rights Commission more than adequately satisfies requirements as identified in the Committee's terms of reference with regard to professionalism, efficiency and effectiveness. The Committee believes that the work done by the Commission is of vital relevance for South Africa and makes an important contribution to the deepening of democracy and the achievement of a human rights culture in this country.²⁶

It is important to point out that the SAHRC has been able to establish itself as 'an effective and passionate defender of human rights'.²⁷ It has also been able to develop a reputation of being an independent institution. These attributes are important, as they have contributed not only to the public awareness of the Commission, but also to its credibility. Indeed, the SAHRC is regarded as one of the most widely known and respected of all the Chapter 9 institutions²⁸ – the Office of the Public Protector being another.

Any assessment of the achievements of the SAHRC has to be done in the context of its functions as prescribed by the Constitution and the Act,²⁹ for it is through performing such functions that the SAHRC discharges its mandate. In a self-reflection report published at the end of its second term (2002–2009), the SAHRC outlined how it had made considerable strides in 'discharging what has been a wide and often contested mandate'.³⁰ In particular, the following achievements of the SAHRC are highlighted:

- Discharging its equality mandate by highlighting the rights of vulnerable people such as migrants, asylum seekers, the elderly, gays and lesbians, and indigenous communities.³¹
- Using public inquiries not only as a method of intervention and a monitoring tool, but also as a mechanism for public education and accountability.³²
- Litigating cases in the courts and entering as *amicus curiae* in landmark cases such as *Government of the Republic of South Africa v Grootboom*.³³
- Working closely with international organisations such as the United

²⁶ *Ibid.*

²⁷ Kader Asmal Report n 25 above.

²⁸ According to the Kader Asmal Report, approximately 50 per cent of the public are aware of the existence of the Commission.

²⁹ Section 184 (1) of the Constitution and Section 7 of the Act.

³⁰ See: SAHRC 'Critically reflecting on an institutional journey (2002–2009)' available at: www.sahrc.org.za (last accessed 6 January 2014).

³¹ *Ibid.*

³² *Ibid.*

³³ 2001 1 SA 46 (CC).

Nations Development Programme (UNDP), the Office of United Nations High Commissioner for Human Rights (OHCHR), and the Office of the United Nations High Commissioner for Refugees (UNHCR).

- Working closely with civil society and government – while still holding them accountable.

One aspect of the SAHRC's achievements that should be emphasised is the way the Commission has used its mandate to address poverty through regular reports on socio-economic rights.³⁴ These have been useful, not only in providing a critical assessment of government's efforts to meet its constitutional obligations, but also as a useful resource for both the state and civil society in their various roles relating to the progressive realisation of socio-economic rights.³⁵ To date there have been seven Economic and Social Rights Reports, covering different monitoring periods. All these reports have been based on information obtained from state institutions and organs, and have focused on efforts towards the meaningful and progressive realisation of economic and social rights.

As mentioned earlier, the SAHRC has a constitutional and legal mandate of promoting human rights through education and public awareness initiatives. The Commission has done this mainly through the Human Rights Advocacy Programme, which has been largely responsible for conducting human rights education and training workshops, public campaigns, advocacy, seminars and conferences.³⁶ Through this programme, the Commission established a Human Rights Advocacy Unit, whose responsibility is 'to promote awareness of human rights and to contribute to the development of a sustainable human rights culture in the republic'.³⁷ The Unit has, over the years, done this through education and training, community outreach initiatives, public dialogue, conferences, workshops, and seminars and presentations.³⁸ The SAHRC has also been involved in human rights curricular development. Initiatives in this regard include assisting and lobbying the national and provincial education departments, producing

³⁴ These reports can be accessed on the SAHRC's website at: www.sahrc.org.za.

³⁵ *Ibid.*

³⁶ See 'SAHRC, Human Rights Advocacy Programme' available at: <http://www.sahrc.org.za/home/index.php?ipkContentID=36> (last accessed 5 January 2014).

³⁷ See: SAHRC, Human Rights Advocacy Unit, South African Human Rights Commission, available at: <http://www.sahrc.org.za/home/index.php?ipkContentID=36> (last accessed 5 January 2014).

³⁸ *Ibid.*

human rights educational documents and teaching materials, facilitating teacher training,³⁹ and sponsoring school activities on important occasions such as Human Rights Day.⁴⁰ In addition to curricular involvement, the SAHRC also provides professional training (including providing training programmes for target groups such as the police, health workers and teachers) and informal dissemination of human rights information – which includes taking out advertisements on radio and in the press.

In addition, extensive public education has been conducted through the SAHRC's official training provider, the National Centre for Human Rights Education and Training (NACHRET) – although this provider is unfortunately no longer in operation. This was one of the SAHRC's more formal efforts towards human rights education. This Centre has provided extensive human rights public education to both state and non-state actors, through workshops, courses and seminars. The creation of the Centre was praised as a unique step by the SAHRC towards bridging formal and informal HRE efforts.⁴¹ NACHRET has also been hailed as an impressive model that 'serves as an example of how educators from civil society and government can be brought together to coordinate focused human rights education'.⁴² According to one commentator, '... the Centre still serves as an example of how education from civil society and government can be brought together to coordinate focused human rights education without too much duplication'.⁴³ Furthermore, the SAHRC has been successful in including human rights education in the school curriculum. This is a very important achievement that has contributed significantly to human rights awareness in South Africa.

Despite its achievements and successes, the SAHRC has faced – and continues to face – several challenges. Indeed, a number of criticisms have been levelled against the Commission. One such criticism relates to the procedure of appointing Commissioners. Under section 193 of the Constitution, members of the Commission are appointed by the President, on the recommendation of the National Assembly. Due to South Africa's unique political dynamics, it could be argued that the procedure lends itself

³⁹ See: Cardenas 'Constructing rights? Human rights education and the state' (2005) 26(4) *International Political Science Review* 372.

⁴⁰ *Ibid.*

⁴¹ See: Kader Asmal Report n 25 above.

⁴² Horn 'Human rights education in Africa' in Bosl & Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 66–67.

⁴³ *Id* at 66.

to political bias – leading to the possibility of political appointments. Related to that is a challenge that has drawn widespread criticism, namely the broad mandate of SAHRC vis-à-vis its available resources. Compared to other NHRIs such as the Uganda Human Rights Commission – as will be seen further below – the SAHRC has a very wide mandate with extensive constitutional and legislative powers. A proper execution of this mandate and exercise of the powers would require concomitant availability of resources and personnel. Because that balance is not ideal, the SAHRC has ‘in practice limited its activities to economic and social rights.’⁴⁴ This raises the question as to why the appointment of full-time commissioners has always been limited to the minimum of five, when there is no maximum number stipulated by the Human Rights Commission Act.⁴⁵

Another challenge relates to funding. Although it is generally believed that the SAHRC is well-funded by the state,⁴⁶ there is a perception that the funding model adversely affects the Commission’s accountability and independence. This is because the Commission does not have its own budget vote. Instead, its budget allocation is located in the vote of the Department of Justice and Constitutional Affairs. The perception created, rightly or wrongly, is that the Commission is accountable to the Department of Justice and Constitutional Affairs – rather than to the National Assembly as stipulated by the Constitution. Although institutional independence is constitutionally assured, there is, however, nothing to prevent the state from controlling the agenda of the Commission through budgetary mechanisms. Indeed, as a state-funded institution, the SAHRC has often been criticised for not being hard enough on government to fulfil its commitments in enforcing the Commission’s recommendations.⁴⁷ It is in that specific context that Kader Asmal’s ad hoc Committee recommended that the location of the SAHRC’s budget should be in the budget vote of parliament, and not in the budget vote of the Department of Justice and Constitutional Affairs. This, and most other recommendations of the ad hoc Committee, is yet to be implemented.

⁴⁴ Peter ‘Human rights commissions in Africa – Lessons and challenges’ in Bosl and Diescho (eds) *Human rights in Africa: Legal perspectives on their protection and promotion* (2009) 351–374.

⁴⁵ EISA ‘South African Human Rights Commission’ available at: <http://www.eisa.org.za/WEP/souagency2.htm> (last accessed 7 January 2014).

⁴⁶ *Ibid.*

⁴⁷ See for example Glaser ‘The Media Inquiry Reports of the South African Human Rights Commission: a critique’ (2000) 99 *African Affairs* 373–393; and Horsten ‘The role played by the South African Human Rights Commission’s Economic and Social Rights Reports in Good Governance in South Africa’ (2006) 2 *PER* 1–21.

Furthermore, the SAHRC has been criticised for not being sufficiently accessible to the rural population and marginalised communities. The Kader Asmal Report observed, for example, that ‘the Commission’s public awareness campaigns remain, in essence, urban based’.⁴⁸ In addition, the SAHRC has a broad and extensive mandate. In view of the unique and problematic history of South Africa and the attendant historical human rights challenges, too much is in fact expected from the SAHRC in terms of human rights promotion, protection, monitoring, investigating and redressing of violations. This requires enormous capacity and resources.

The foregoing discussion highlights some of the achievements and challenges of the SAHRC. It is against this backdrop that the Ugandan Human Rights Commission (UHRC) is examined, with a view to obtaining a comparative picture and for drawing comparative lessons.

THE UGANDA HUMAN RIGHTS COMMISSION (UHRC)

Constitutional and legislative mandate

Like the South African Human Rights Commission, the Ugandan counterpart is also established by its Constitution⁴⁹ and it is operationalised by statute.⁵⁰ In terms of article 51(2) of the Constitution, the Commission is composed of a chairperson and not less than three other persons appointed by the president, with the approval of parliament. The functions and powers of the Commission are listed under articles 52 and 53 of the Constitution respectively. In particular, article 52(1) lists the functions of the UHRC to include:

- investigating complaints relating to the violation of human rights;
- visiting jails, prisons and other places of detention to assess and inspect conditions of inmates;
- establishing a programme of research, education and information to enhance the respect for human rights;
- recommending to parliament effective measures to promote human rights;
- creating and sustaining awareness of the Constitution as the fundamental law of the country;
- formulating, implementing and overseeing programmes intended to inculcate awareness of citizens’ rights, obligations and civic responsibilities;

⁴⁸ Kader Asmal Report n 25 above.

⁴⁹ Article S1(1) of the Ugandan Constitution.

⁵⁰ The Uganda Human Rights Commission Act.

- monitoring the government's compliance with international human rights obligations; and
- performing other functions as may be provided for by law.

The powers of the UHRC are laid down in article 53. It is particularly important to note that the Commission has the powers of a court, and, in exercising these powers, the Commission may:

- issue summons or other order requiring the attendance of any person or production of any documents;
- question any person in respect of any matter under investigation;
- require any person to disclose any information relevant to any investigation by the Commission; and
- commit persons for contempt of its orders.⁵¹

These are far-reaching judicial powers which the UHRC has used from time to time to make decisions regarding claims of human rights violations. The Commission has made several judicial decisions including cases such as *Masumbuko Edward v Hon Henry Muganwa Kajura*⁵² which dealt with the right to property; *Emukule Ismail v Attorney-General*⁵³ dealing with the right to personal liberty; *Ojera Denis v Attorney-General*⁵⁴ dealing with the right to personal liberty and freedom from torture and degrading treatment; and *Humanshu Dalia v Attorney-General*⁵⁵ dealing with unlawful detention. These are just a few examples of cases in which the UHRC has used its powers of adjudication. Under article 53(2) of the Constitution, the orders that the Commission may make (if satisfied that there has been an infringement of a human right), include the release of a detained person, payment of compensation, or any other legal remedy or redress. It must be pointed out, however, that concerns have been expressed about the frequent lack of implementation of the UHRC's decisions by the state – particularly decisions concerning awards of compensation to victims of human rights violations.⁵⁶ This, as will be seen further below, is one of the challenges facing the UHRC.

⁵¹ Article 53(1) (a)–(d).

⁵² UHRC No 679 of 1998.

⁵³ UHRC No 837 of 2000.

⁵⁴ UHRC No 199 of 2001.

⁵⁵ UHRC no 117 of 2002.

⁵⁶ See: 'Concluding Observations of the Human Rights Committee, Uganda' UN Doc. CCPR/CO/80/UGA (2004) available at: <http://www1.umn.edu/humanrts/hrcommittee/uganda2004.html> (last accessed 7 January 2014).

Independence of the UHRC is guaranteed under article 54 of the Constitution, in terms of which the Commission is not ‘subject to the direction or control of any person or authority’. This legal independence is reinforced by the fact that the Commission prescribes and establishes its own procedures, which are supposed to be unquestionable.⁵⁷ In so far as financial independence is concerned, provision is made under article 55 for the UHRC to be self-accounting and for all its expenses to be drawn directly from the treasury. Moreover, in terms of article 12 of the Uganda Human Rights Commission Act,⁵⁸ it is the responsibility of parliament to ‘ensure that adequate resources and facilities are provided to the Commission to enable it to perform its functions effectively’. It would appear, therefore, that in addition to legal independence, the UHRC has financial autonomy and is financially independent and stable. However, as discussed below, in reality this is not the case.

A discussion of the independence of the UHRC would be incomplete without reference to certain limitations as to what the Commission can and cannot do. For example, it cannot investigate any matter pending before a court or judicial tribunal, or a matter involving the relations or dealings between the government of Uganda and the government of any foreign state or international organisation.⁵⁹ The Commission also cannot investigate a matter relating to the exercise of the prerogative of mercy.⁶⁰ Whereas there are rational reasons for these limitations, it could be argued, however, that some of the limitations are inconsistent with the Paris Principles,⁶¹ which require that national human rights institutions be given as broad a mandate as possible to carry out the functions of protecting and promoting human rights.⁶²

Achievements and challenges

In assessing the achievements of the UHRC, several factors have to be taken into account – including its constitutional functions and legislative mandate. Addressing the Conference for Commonwealth National Human Rights Institutions in 2007, the then Chairperson of the UHRC was quick to point out that the Commission submits its annual reports to parliament timeously – providing an opportunity for parliament and the public to audit the

⁵⁷ Article 52(3).

⁵⁸ Cap 24, 2 May 1997.

⁵⁹ Article 53(4) (a) and (b).

⁶⁰ Article 53 (4) (c).

⁶¹ See n 1 above.

⁶² Principles 1, 2 and 3.

performance of the Commission.⁶³ Such reports also provide the Commission with an opportunity for self-assessment and appraisal. The 2012 annual report, for example, provides the latest assessment on a number of areas under the Commission's mandate. These include assessment of conditions in places of detention, human rights education and outreach, access to quality health care services, access to education, and compliance with international and regional reporting obligations – to name a few.⁶⁴

With respect to monitoring conditions in places of detention – a unique function of the Commission – the UHRC inspected 900 places of detention in 2011 and 896 in 2012.⁶⁵ The Commission noted several positive developments, but also observed a trend of challenges including, *inter alia*, high prison populations, detention of children with adults, lack of protection for inmates with disabilities, incidences of torture and solitary confinements, long and arbitrary detention, and sharing of facilities between male and female inmates.⁶⁶ The Commission made several recommendations in its report.

Another area in which the UHRC claims to be fairly successful, is human rights education and outreach. Activities conducted in this regard include workshops, community outreach, media campaigns, publications, and commemoration of human rights days.⁶⁷ The UHRC claims to have 'sensitised' 40 666 people in 2011 and 19 274 in 2012 – including law enforcement and security agencies, local government officials, health workers, teachers and grassroots communities.⁶⁸ In doing this, the Commission faced a number of challenges, including inadequate funding, non-functional district human rights committees, and non-prioritisation of human rights issues at district level.⁶⁹

It is fair to say that in so far as investigations of complaints of human rights violations are concerned, rather little has been achieved – although there does seem to be some limited recent improvement. In 2012, the UHRC

⁶³ Sekaggya 'Experiences of the Uganda Human Rights Commission in fulfilling its mandate', Conference for Commonwealth National Human Rights Institutions, 26–27 February 2007, Malborough House, London.

⁶⁴ Uganda Human Rights Commission 15th Annual Report (2012). All annual reports are available from the UHRC website (www.uhrc.ug).

⁶⁵ *Id* at xxxv.

⁶⁶ *Ibid.*

⁶⁷ *Id* at 55.

⁶⁸ *Ibid.*

⁶⁹ *Id* at xxxvi.

investigated only 2 195 complaints, of which 839 were finalised (thirty-eight per cent), whereas 1 356 were only partially investigated.⁷⁰ These figures are broadly comparable to 2011, when only thirty-seven per cent of cases were fully investigated.⁷¹ In 2013, however, 2 068 complaints were investigated, and 1041 (fifty per cent) were investigated to completion.⁷² It is interesting to note that whereas 706 new complaints were registered in 2012, only twelve of these were on the Commission's own initiative,⁷³ and this dropped to only five in 2013.⁷⁴ Comparatively, the SAHRC investigated a total of 8 919 complaints in 2012/13 to 7 047 (seventy-nine per cent) of which were finalised.⁷⁵ This is comparable to the percentage of complaints finalised for the period 2009/10 to 2011/12 (seventy-two to eighty-seven per cent).⁷⁶ This illustrates the disparity in volumes, efficiency and apparent effectiveness of the two NHRIs. The main reasons given for the low and slow rate of investigations by the UHRC, include inadequate capacity, failure by complaints and witnesses to provide timely updates, and delayed responses from respondents.⁷⁷

Mention ought to be made of the UHRC's role in monitoring the government's compliance with international and regional human rights obligations. In performing this role, the Commission has identified certain challenges that have to be addressed to ensure that state reporting to the various monitoring mechanisms is up to date. These challenges include delays and non-submission of reports; ineffective coordination mechanisms; lack of effective implementation; limited capacity and consultation with, and participation of, stakeholders.⁷⁸

One of the main challenges facing the UHRC is its wide mandate and the associated limited budget. This, as mentioned earlier, includes conducting investigations; visiting places of detention; research and education; making recommendations to parliament; and monitoring government compliance with international human rights obligations. This mandate requires

⁷⁰ *Id* at xxxiv.

⁷¹ Uganda Human Rights Commission 14th Annual Report (2011) xxiv.

⁷² Uganda Human Rights Commission 16th Annual Report (2013) 12.

⁷³ Uganda Human Rights Commission 15th Annual Report (2012) 2.

⁷⁴ Uganda Human Rights Commission 16th Annual Report (2013) 2.

⁷⁵ South African Human Rights Commission Annual Report 2013 (2012/13) 24. The 2013/14 Report is not yet available. All annual reports are available at: the SAHRC website <http://www.sahrc.org.za/home/> (last accessed 7 January 2014).

⁷⁶ *Ibid.*

⁷⁷ UHRC 15th Annual Report (2012) xxxiv.

⁷⁸ *Id* at 193–194.

considerable financial and human resources. Although the SAHRC faces the similar challenge of a wide mandate, it is much better resourced than the UHRC. Ironically, article 55 (1) of the Ugandan Constitution provides that the budget of the UHRC should be allocated directly from the treasury – unlike the SAHRC which does not have its own budget vote. Nevertheless, the UHRC faces persistent challenges stemming from inadequate funding, low staffing levels, and dependence on development partners for funding core activities. In comparing the financial challenges of the UHRC and SAHRC, the different levels of economic development between Uganda and South Africa should be considered – a point that was highlighted earlier.

A similar point was made with regard to the different levels of political and democratic stability and respect for the Constitution and human rights. Therein lies the main difference between the two countries and the two NHRIs. The current Ugandan president has been in power for 29 years (since 1986). Human Rights Watch has often reported cases of the Ugandan police frequently operating outside the law – carrying out torture, extortion and in some cases extrajudicial killings.⁷⁹ Accusations of corruption involving the president and senior government officials are widespread. Furthermore, in 2006 the *Economist* reported the prevalence of politics of patronage operating in the country.⁸⁰ The inhuman treatment of opposition leaders over the years is also well documented.⁸¹ It is an enormous challenge for the UHRC – or any human rights organisation – to operate in such an environment.

A related challenge is that some parts of Uganda (particularly northern Uganda) have been plagued by conflict for many years. For more than two decades, northern Uganda has been home to the insurgence of the Lord's Resistance Army led by Joseph Kony – that has produced untold suffering and gross human rights violations. Whilst the conflict is all but over, the effects will remain for a long time. Rebel activity is also prevalent along the Uganda/Democratic Republic of Congo (DRC) border, and human rights violations usually accompany such activity. The UHRC has had to operate in these tough situations where investigations of human rights violations are

⁷⁹ See: Norman 'The world's enduring dictators: Yoweri Museveni', *CBS News*, 19 June 2011, available at: <http://www.cbsnews.com/news/the-worlds-enduring-dictators-yoweri-museveni-uganda-19-06-2011/> (last accessed 17 January 2014).

⁸⁰ 'Uganda: Democracy or dictatorship' *The Economist*, 4 March 2006.

⁸¹ See, for example, Muwambo 'Uganda continue harassing opposition' available at: <http://www.modernghana.com/news2/324550/1/uganda-continue-harassing-opposition.html> (last accessed 8 January 2014).

much more challenging. The SAHRC does not face such a challenge, as similar conflict does not take place in South Africa.

COMPARATIVE LESSONS

An analysis and comparison of the South African and Ugandan Human Rights Commissions has to consider the backdrop of the social, economic, political and historical contexts of the two countries in which the commissions exist. It is in that context that the mandates and functioning of the two NHRIs, their achievements and challenges, and their comparative lessons, must be seen. The SAHRC, for example, has a special mandate to monitor the realisation of socio-economic rights. This is in keeping with the unique and exceptional recognition given to such rights in the South African Constitution.⁸² Indeed, ‘the judicial enforcement of these rights by the courts and the constitutional mandate of the South African Human Rights Commission to monitor and assess the observance of the rights by the state and non-state entities also contribute to the effectiveness of the constitutional guarantee of these rights’.⁸³ Unlike South Africa, however, Uganda gives very little recognition to socio-economic rights. Despite Uganda’s obligation to the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸⁴ the Ugandan Constitution pays minimal and peripheral attention to such rights.⁸⁵ Accordingly, unlike the SAHRC which has efficiently monitored the realisation of socio-economic rights (through its regular Economic and Social Rights Reports, among other things), the UHRC has done poorly on that front – given the lack of constitutional gravitas given to such rights.

Mention was made earlier of the independence of the UHRC, as guaranteed under article 54 of the Ugandan Constitution. This was mentioned not only in terms of legal independence, but also financial independence. Ironically, whereas the SAHRC does not enjoy the constitutional independence of having its own budget vote, the UHRC, which enjoys this right, is in reality less financially independent. According to one commentator:

⁸² See sections 23, 24, 25, 26, 27 and 29 of the Constitution.

⁸³ See: SAHRC ‘The Right to Education 5th Economic and Social Rights Report Series’ (2004) x.

⁸⁴ Uganda acceded to the ICESCR on 21 January 1987.

⁸⁵ Most of these rights are not in the main body of the Constitution, but rather are laid down in the National Objectives and Directive Principles of State Policy set out in the Preamble, and are intended to guide all organs of state or non-state actors in applying or interpreting the Constitution or any other law.

The Commission's main challenge has been the finances to enable it to function optimally. The government has not been happy with the hard work being done by the Commission and has thus been curtailing its funding. This has forced the Commission to rely to a very large extent on funding from development partners.⁸⁶

Lessons can also be learnt from the socio-political situations within which the two NHRIs operate. Mention was made earlier of the conflict situations that the UHRC has had to operate under over the years. There is no doubt that such situations often entail massive human rights abuses that need to be investigated and addressed. This poses a challenge for NHRIs in the execution of their mandates. Whereas the SAHRC has had to deal with issues relating to public protests and incidents of violence such as the Marikana Massacre,⁸⁷ the UHRC has had to deal with more serious human right abuses arising from armed conflicts and political strife – such as the long standing rebel war in northern Uganda. Accordingly, different NHRIs play different roles in different contexts and will have – associated with this – differing aims and objectives. In short, the role of NHRIs can be expected to be different under varying political systems.

There is also the issue of capacity. The fact that the UHRC investigated only 2 195 complaints in 2012 compared to the SAHRC's 8 919 complaints during the same period, for example, suggests varying and disparate capacity, efficiency and effectiveness.⁸⁸ Interestingly, both NHRIs complain of a lack of capacity and resources.

Another interesting difference between the two NHRIs is that the UHRC, unlike the SAHRC, has judicial powers.⁸⁹ As mentioned earlier, the UHRC has, periodically, used these powers to make decisions regarding claims of human rights violations.⁹⁰ The challenge, however, is that where the Commission's decisions have resulted in awards of compensation to complainants, such awards have not been fully honoured by the

⁸⁶ Peter n 44 above 362.

⁸⁷ On 16 August 2013, members of a contingent of the South African Police Service opened fire on a group of striking miners at Marikana Lonmin mine – killing 34 of them and wounding at least 78 others. The incident was the single most lethal use of force by South African security forces against civilians in post-apartheid South Africa.

⁸⁸ Although the 2013 annual report is available from the UHRC, this is not the case with the SAHRC, and so comparisons for 2013 cannot be made.

⁸⁹ Article 53, n 48 above.

⁹⁰ Notes 49–52 above.

government.⁹¹ So, while the possession of judicial powers is an important lesson to learn from the UHRC, such powers are ineffectual if compliance with remediation is in fact absent.

CONCLUDING REMARKS

It was not the intention of this paper to argue that one of the two NHRIs under discussion is better than the other. Rather, the aim was to demonstrate that the South African and Ugandan Human Rights Commissions face different challenges and dynamics that have affected the realisation of their constitutional and legislative mandates in different ways. The aim was further to demonstrate that despite the challenges they face, the two NHRIs have achieved and realised some of their mandates in varying degrees. The most important message, however, is that despite the challenges discussed and the disparate political, social and economic dynamics that impact on the functions of the two NHRIs, they can nevertheless learn from each other's successes and failures in a significant way.

It is not possible to meaningfully assess the effectiveness of the two institutions relative to each other. The Paris Principles and the ICC-accreditation process do not recognise the other significant non-legal factors that can affect the effectiveness of an NHRI, like the level of democracy in a state and a government's attitude to human rights in general, and the NHRI in particular. The Paris Principles focus on factors relevant to the establishment of NHRIs, rather than on how they perform once established and how they are perceived by others; accordingly, greater thought needs to be directed to factors that make NHRIs effective.⁹²

Carver⁹³ has discussed at length what the indicators of effectiveness of NHRIs might be. According to Carver, popular legitimacy is important: a national institution is effective if its popular constituency regards it as being so. However, as Carver accurately posits, this perception is certainly not a quantifiable measure of effectiveness. The most common indicator currently used by NHRIs is their success in handling complaints (as is discussed above for both Uganda and South Africa). Some national institutions also measure their outputs in other areas, including, for example, numbers of training workshops held, the number of educational/outreach initiatives undertaken,

⁹¹ Sekagya n 63 above.

⁹² Murray 'Criteria and factors for assessing their effectiveness' (2007) 25 (2) *Netherlands Quarterly of Human Rights* 189.

⁹³ Carver *Performance & Legitimacy: National human rights institutions* (2004).

and how many reports or press releases are published. All this said, these indicators do not reveal how effective the various initiatives are in influencing the human rights situation in the country concerned – especially in differing socio-economic and political contexts, as is the case with Uganda and South Africa,

It is common knowledge that South Africa is far more socio-economically, politically and democratically advanced than Uganda. South Africa is a relatively stable democracy, whereas Uganda is a benevolent dictatorship.⁹⁴ There is far more acceptance and respect for the South African Constitution than there is for its Ugandan counterpart. There is also far more respect for the rule of law in South Africa than there is in Uganda. The two NHRIs therefore face different challenges and operate under vastly different circumstances. That notwithstanding, the success and achievements (or otherwise) of a human rights institution have to be seen in the context of the challenges and circumstances within which it operates – the more the challenges there are, the larger the task at hand. This is the case with the two NHRIs discussed in this paper.

⁹⁴ See: Van de Walle 'The Impact of multi-party politics in Sub-Saharan Africa' (2001) 1 *Forum for Development* (generally). See, also, The Economist Intelligence Unit 'Democracy Index 2012: Democracy at a standstill' available at: https://portoncv.gov.cv/dhub/porton.por_global.open_file?p_doc_id=1034 (last accessed 3 January 2014).