Towards a greater role and enhanced effectiveness of national Human Rights Commissions in advancing the domestic implementation of socio-economic rights: Nigeria, South Africa and Uganda as case studies

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Abstract

Although national Human Rights Commissions (NHRCs) are institutional mechanisms suitable for advancing the domestic implementation of socio-economic rights, traditional approaches to the advancement of these rights have more readily focused on the role of courts. This process has witnessed the prioritisation of the justiciability of these rights above other non- and quasi-judicial means for their realisation. As a result, contemporary scholarship has barely noticed the role and practical efforts of NHRCs in this regard. To fill this gap, this article evaluates the mandate, activities, and effectiveness of NHRCs in three selected Commonwealth African countries – Nigeria, South Africa and Uganda – and identifies four factors which either impair or enhance their effective performance of this role: the explicit provision of socio-economic rights as justiciable guarantees in the constitutional framework of states; the granting of an explicit legal or constitutional mandate on socio-economic rights to NHRCs; the provision of adequate institutional, functional, and financial independence for NHRCs; and a high level of institutional support from other institutions that ensure states' accountability for human rights.

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INTRODUCTION

As a species of human rights, socio-economic rights enhance universal access to and enjoyment of social goods and services such as education, food, healthcare, housing, social security, and clean water.[1] These rights have gained universal appeal based on their intrinsic values of promoting the wellbeing of the human person.[2] Accordingly, not only are socio-economic rights guaranteed by international human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR),[3] and other related international treaties, such as the African Charter on Human and Peoples' Rights (the African Charter);[4] they are also provided for in the national constitutions of states.[5] Generally, it is beyond argument that all the states that have ratified the ICESCR, the African Charter, and other relevant international treaties on these rights[6] are legally bound to respect, promote, protect, and fulfil the socio-economic rights of their citizens.[7]

Although there are several institutional mechanisms for advancing the implementation of socio-economic rights, academic reviews have largely

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1 Erasmus 'Socio-economic rights and their implementation: the impact of and international instruments' (2004) 32 *International Journal of Legal Information* 243.

2 Dennis & Stewart 'Justiciability of economic, social, and cultural rights: should there be an international complaints mechanism to adjudicate the rights to food, water, housing and health?' (2003) 98 *American Journal of International Law* 462 464.

3 Adopted 19 December 1966 993 UNTC 3 (entered into force 3 January 1976). As at 31 October 2015, there were 164 state parties, including Nigeria and South Africa. Nigeria is yet to ratify this treaty.

4 Adopted on 27 June 1981, OAU Doc CAB/LEG/67/3 REV 5 21 ILM 58 entered into force 21 October 1986.

5 Heyns & Kaguongo 'Current human rights law in Africa' (2006) 22 *South African Journal on Human Rights* 673–717.

6 All African UN member states, except Botswana, the Comoros and South Sudan, have ratified the ICESCR. All African States, except South Sudan, have ratified the African Charter. Available at: https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty (last accessed 8 April 2014); http://www.achpr.org/instruments/achpr/ratification (last accessed 8 April 2014). Other treaties with provisions relevant to socio-economic rights include the African Charter on the Rights and Welfare of the Child (arts 11 and 14) and the Protocol to the African Charter on the Rights of Women in Africa (arts 13–16).

7 Article 26 of the Vienna Convention on the law of treaties prescribes that every treaty in force is binding upon the parties to the treaty and must be performed in good faith; article 2(1) of the ICESCR; article 2(1) of the African Charter; McChesney *Promoting and defending economic, social and cultural rights: a handbook* (2000) 36–39; Alston & Quinn 'The nature and scope of state parties obligations under the international covenant on economic, social and cultural rights' (1987) 9 *Human Rights Quarterly* 159–229.

focused on the role of domestic courts in adjudicating these rights.[8] However, the reality is that domestic courts have contributed very little to socio-economic rights accountability because of their inherent limitations.[9] Apparently, this situation has motivated a gradual shift in scholarship to consider what is achievable through quasi-judicial and non-judicial bodies such as NHRCs rather than judicial mechanisms.[10]

Against this background, the article interrogates the responsibility of NHRCs to advance the domestic implementation of socio-economic rights using the NHRCs of Nigeria, South Africa and Uganda as case studies. The article seeks to achieve two objectives: (i) to establish the extent to which these NHRCs, as opposed to other related state institutions, actually and potentially constitute effective mechanisms for advancing domestic implementation of socio-economic rights; and (ii) to identify the factors, based on an analysis of commonalities between the three countries, that enhance the role and effectiveness of these institutions in this regard and offer recommendations for strengthening them to advance their implementation of socio-economic rights. These common factors are identified, despite major differences in domestic legal culture as regards socio-economic rights in the three countries, as well as in the mandates, approaches and attitudes of the three NHRCs in relation to socio-economic rights. The three NHRCs, spanning West, Southern and East Africa, have been chosen as a representative sample of Commonwealth Africa.

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8 Viljoen 'The justiciability of socio-economic and cultural rights: experience and problems' in Donders & Volodin (eds) *Human rights in education, science and culture: Legal developments and challenge* (2007) 53–110; Bilchitz *Poverty and fundamental rights, the justification and enforcement of socio-economic rights* (2007) 102 177; Ssenyonjo 'Justiciability of economic and social rights in Africa: General overview, evaluation and prospects' (2004) 9 *East African Journal of Peace and Human Rights* 1–36; Pieterse 'Coming to terms with judicial enforcement of socio-economic rights' (2004) 20 *South African Journal on Human Rights* 383–417; Mubangizi 'The protection/enforcement of socio-economic rights in Africa: lessons from the South African experience (2007) 15 *African Yearbook of International Law* 87–106.

9 Michelman 'The Constitution, social rights and liberal political justifications' in Barak-Erez & Gross (eds) *Exploring social rights: between theory and practice* (2011) 21 23; Ibe 'Beyond justiciability: realizing the promise of socio-economic rights in Nigeria' (2007) 7 *African Human Rights Law Journal* 197.

10 Brand 'Introduction to socio-economic rights in the South African constitution' in Brand & Heyns (eds) *Socio-economic rights in the South Africa* (2005) 1 20–30; Yamin 'The future in the mirror: incorporating strategies for the defence and promotion of economic, social and cultural rights into mainstream human rights agenda' (2005) 27 *Human Rights Quarterly* 1220; Rajogopal 'Pro-human rights but anti-poor? A critical evaluation of the Indian Supreme Court from a social movement perspective' (2007) 8 *Human Rights Review* 1–50.

The article has four sections, including the introduction. The second section discusses the suitability of NHRCs, relative to other state institutions and non-state actors, to advance the domestic implementation of socio-economic rights. This is followed by a consideration of the responsibility and competence of NHRCs to advance the domestic implementation of socio-economic rights. The fourth section evaluates the institutional structures, mandates and efforts of the three selected NHRCs in advancing the domestic implementation of these rights. The fifth section deduces and discusses the common factors necessary for enhancing the role and effectiveness of the three NHRCs in advancing the domestic implementation of these rights. The article concludes with some recommendations.

THE RELATIVE SUITABILITY OF NHRCS FOR ADVANCING THE IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS

In addition to NHRCs, other state institutions and non-state actors also bear some responsibility for facilitating the domestic implementation of socio-economic rights. These institutions often complement one another in the promotion and protection of human rights.[11] However, NHRCs are, for a number of reasons, better positioned than the other entities to advance the domestic implementation of socio-economic rights. In what follows, the suitability of NHRCs to advance socio-economic rights is compared with that of domestic courts, parliamentary Human Rights Committees (PHRCs), and NGOs.

First, as against NHRCs, domestic courts generally do not have a direct or specific mandate which addresses socio-economic rights. Even where they have such competences, domestic courts play a largely protective role as opposed to the dual protective and promotional role of NHRCs. Also, the coercive nature of judicial adjudication is often not the most appropriate way of resolving these disputes. Generally, the reactionary character of courts is a hindrance to the timely resolution of complaints involving socio-economic rights,[12] compared to the more proactive nature and disposition of NHRCs.[13] Courts, as opposed to NHRCs, accord greater weight to the peculiar interest of specific litigants, which, as Rajagopal notes, makes them less capable of

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[11] Elmendorf 'Advisory counterparts to constitutional courts'(2007) *Duke Law Journal*) 953 955.

[12] Fredman *Human rights transformed: positive rights and positive duties* (2008) 169.

[13] *Ibid*.

addressing systemic violation of socio-economic rights in practice.[14] Furthermore, as O'Brien correctly argues, judicial processes, as against NHRCs, are notoriously complicated and characterised by 'relative formality, expense, delay, complexity and rule-dominated qualities.'[15] Undoubtedly, these are serious constraints that hamper ordinary people who are victims of socio-economic rights violation from obtaining social justice.[16]

Second, NHRCs share some common interest and responsibility in advaning the implementation of socio-economic rights with PHRCs.[17] However, ensuring the practical implementation of socio-economic rights is a multi-dimensional activity and goes beyond the material jurisdiction and capability of PHRCs.[18] Therefore, unlike NHRCs, the PHRCs can neither devote specific, targeted and continuous attention, nor develop specific action plans and expertise for advancing the implementation of these rights.[19] Arguably, advancing the implementation of socio-economic rights is not an integral function of the PHRCs per se. Consequently, their potential or capability in this regard is relatively limited when compared to that of NHRCs.

Finally, NHRCs and human rights NGOs perform similar roles in the field of human rights.[20] However, NHRCs and NGOs differ in several respects, particularly with regard to their legal bases, functions, and powers.[21] NHRCs are creations of law, while NGOs are not: they are generally voluntary entities. As state agencies, NHRCs generally have greater access to human capacity, expertise, tools and resources than NGOs.[22] Divested of any clearly defined relationship with the state, local NGOs struggle on their own to

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14 Rajogopal n 10 above at 1.

15 O'Brien 'Ombudsmen and social rights adjudication' (2009) *Public Law* 23.

16 Gloppen and Kanyongolo 'Courts and the poor in Malawi: economic marginalization, vulnerability and the law' (2007) 5 *International Journal on Constitutional Law* 258.

17 Salzberg & Young 'The parliamentary role in implementing international human rights: a US example (1977) 12 *Texas International Law Journal* 251 253.

18 Hiebert 'Parliament and the Human Rights Act: can the JCHR help facilitate a culture of rights?'(2006) 4 *International Journal on Constitutional Law* 1 5–8.

19 Burnell 'Financial indiscipline in Zambia's third republic: the role of parliamentary scrutiny' (2001) 7 *Journal of Legislative Studies* 34–6.

20 Edwards ' Assessing the effectiveness of human rights non-governmental organizations (NGOs) from the birth of the United Nations to the 21st century: attributes of highly successful human rights NGOs' (2010) 18 *Michigan State Journal of International Law* 165 170.

21 Qafisheh 'Defining the role of national human rights with regard to the United Nations' (2006) 36 *Legal Report Series* 21.

22 Edwards n 20 above at 179.

fulfill their self-imposed objectives in relation to human rights. Therefore, while NHRCs can effectively leverage their legal status and institutional capacity to obtain responses from the state with respect to their findings and recommendations on the state of socio-economic rights implementation, NGOs have little or no influence on their activities. Arguably, this situation makes NGOs less effective than NHRCs in advancing the implementation of socio-economic rights. Furthermore, the role and activities of NGOs in advancing human rights are voluntary, while those of NHRCs are statutory and are, at least, inherently compelling. These factors both impel and enable NHRCs to adopt clear strategies, including action plans and resources, to execute their mandates, compared to NGOs that depend on philanthropy and self-motivation to carry out their self-imposed and identified goals and activities.

In conclusion, by virtue of their special status, functions, and competences NHRCs have inherent advantages over the courts and other related accountability-bodies for advancing the domestic implementation of socio-economic rights. At the same time, NHRCs are not alternatives or substitutes for other relevant institutional mechanisms. Rather, they are complementary institutions which need to work harmoniously with other relevant state institutions, as well as with NGOs, to enhance the domestic implementation of socio-economic rights. Indeed, NHRCs are likely to be more effective in achieving their responsibilities on socio-economic rights when supported and complemented by other legal and institutional mechanisms with competences to ensure states' accountability for their legal obligation to implement socio-economic rights.

THE RESPONSIBILITY OF NHRCS TO ADVANCE THE IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS

As bodies exclusively and directly mandated to promote and protect human rights, the responsibility of NHRCs to advance the implementation of socio-economic rights is inherent. General Comment 10 of the United Nations (UN) Committee on Economic, Social and Cultural Rights emphasises that NHRCs have a duty to uphold the indivisibility of human rights by prioritising the consideration of socio-economic rights.[23] Substantive international treaties, such as the Convention on the Rights of Persons with

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[23] UN Committee on CRC General Comment: The role of independent national human rights institutions in the protection and promotion of the rights of the child (15/11/2002) CRC/GC/2002/2.

Disabilities (CRPD)[24] and the African Charter[25] also incorporate a direct role for NHRCs in promoting and protecting the rights they guarantee, some of which relate to socio-economic issues.

Arguably, the international human rights system takes NHRCs' responsibility to advance the domestic implementation of socio-economic rights as a given.[26] Therefore, it is something of an aberration for NHRCs to decline this responsibility except when explicitly excluded by law. In general, NHRCs are conscious of this fact even if the enabling law does not explicitly mention socio-economic rights as part of their mandate as evident in their resolve to recognise socio-economic rights as a key component of their action plans and to advance their implementation.[27] This approach, it is submitted, is correct given that the socio-economic rights mandate of NHRCs inheres in their functions to promote and protect human rights as indivisible, interrelated, and interdependent.[28] Thus, the competence to advance socio-economic rights is, of necessity, implied for NHRCs insofar as their mandate includes all categories of human rights.[29] Although it is conceded that this responsibility is not always apparent and often problematic in states where there is no explicit constitutional recognition of socio-economic rights, to deny this responsibility has become more the

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24 Article 33(2) of the ICPD opened for signature 30 March 2007 2515 UNTS 3 (entered into force 3 May 2008). As at 31 October 2015, there were 159 state parties including Nigeria, South Africa and Uganda.

25 Article 26 of the African Charter.

26 UN Commission for Human Rights resolutions: 2010 A/RES/64/161; 2008 A/RES/63/172; 2008 A/RES/63/169; 2005 S/RES/60/154; 1999 A/RES/54/176; 1997 A/RES/51/128; and 1995A/RES/50/176.

27 The 5th conference of African national human rights institutions held in Abuja Nigeria November 2005 (the Abuja Declaration) available at: www.nanhri.org (31 October 2015).

28 Aurora 'Promoting and protecting the economic, social and cultural rights of women: The NHRI mandate.' (2007) 5 available at: http://www.equitas.org/ (31 October 2015).

29 Connelly 'The Irish human rights commission and the implementation of economic, social and cultural rights' *Report of the proceedings international round table on national institutions implementing economic, social and cultural rights* (2005) 75–70; Park 'Economic, Social and Cultural Rights' *State Obligations and National Human Rights Commission of Korea Report of the proceedings international round table on national institutions implementing economic, social and cultural rights* (2005) 54–58; Pickard 'The New Zealand Human Rights Commission and the implementation of economic, social, and cultural rights' *Report of the proceedings international round table on national institutions implementing economic, social and cultural rights* (2005) 89–94; Campos 'National Commission of Human Rights in Mexico on the protection of economic, social and cultural rights' *Report of the proceedings international round table on national institutions implementing economic, social and cultural rights* (2005) 95–104.

exception than the rule. As Hatchard argues, the putative mandate of NHRCs over socio-economic rights can legitimately be derived from external sources, such as the ICESCR and other international treaties states have ratified, irrespective of the legal status of these rights within the domestic legal framework.[30] In this regard, NHRCs without an explicitly stated socio-economic rights mandate are expected to interpret their general human rights mandate creatively to include socio-economic rights.[31] Therefore, what is required of NHRCs is to use all available means to respond to socio-economic rights whether or not they are constitutionally recognised as justiciable human rights.[32]

THE EFFORTS BY THE NIGERIAN, SOUTH AFRICAN AND UGANDAN NHRCS TO ADVANCE THE DOMESTIC IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS

The Nigerian National Human Rights Commission (NNHRC)

The institutional structure and socio-economic rights mandate of the NNHRC

The NNHRC was hastily decreed into existence by one of the most brutal military regimes in Nigeria's political history, led by General Sanni Abacha who ruled the country between 1994 and 1998. Upon seizing power, Abacha let loose a reign of terror and repression on political opposition.[33] Before long he orchestrated a phantom *coup,* which served as pretext for the imprisonment of several opposition figures, including former President Olusegun Obasanjo.[34] Furthermore, he arrested and ensured the judicial murder of nine minority leaders of the Ogoni people – including the

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30 Hatchard 'The inter-relationship between Commonwealth human rights commissions and other national human rights institutions' (2011) available at: http://www.britishcouncil.org/governance-report061003.doc 15 (last accessed 14 October 2014).

31 In the Philippines, the national constitution restricted the mandate of the national human rights commission to 'investigate on its own or on complaint by any party, all forms of human rights violation involving civil and political rights'. The Philippines national human rights commission transcended this constitutional restriction by issuing resolution CHR No. A95–069, where it differentiated between investigations necessary for the purpose of prosecution civil and political rights and investigations necessary for monitoring socio-economic rights and asserted its right to deal with socio-economic rights complaints.

32 Commonwealth Secretariat (2001) *National Human Rights Institutions: Best Practice* (hereafter referred to as the 'Commonwealth Best Practice Handbook') 23.

33 Constitutional Rights Project Annual Report: *Human Rights' Practices in Nigeria* (July 1997–September 1998).

34 Abegurin (2003) *Nigeria foreign policy under military rule 1966–1999* 149 152.

playwright Ken Saro-Wiwa – despite pleas for clemency from the international community.[35] The increasingly repressive character of the regime led to the suspension of Nigeria from the Commonwealth of Nations while the regime itself was internationally isolated.[36]

Apparently jolted by its pariah status, the regime devised various ways of restoring some respectability to its battered image. One such scheme was unilaterally to decree the establishment of the NNHRC in 1995 in an attempt to showcase the regime's meretricious commitment to uphold human rights in the country.[37] The Abacha decree did not create the NNHRC with any credible intention to promote and protect human rights, but as subterfuge to placate the international community and deflect criticism of his notorious record of human rights violations.[38] This fact was evident in the weaknesses associated with the Commission's architecture, which, among others, lacked institutional and operational independence and autonomy.[39] However, the dire state of the NNHRC led to agitation which eventually culminated in the amendment of the enabling Act by the National Assembly in 2010 to strengthen the Commission's institutional structure.[40]

Currently, the NNHRC has sixteen members and is headed by either a retired judge or an experienced legal practitioner.[41] The President nominates the commissioners subject to confirmation by the Senate.[42] In addition to security of tenure, commissioners are also immune from civil and criminal liability in the discharge of their functions insofar as they act in good faith and within their official capacities.[43] The Commission enjoys a reasonable level of independence from the direction and control of the state or any other

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35 'Nigerian foaming with blood' *The Economists* London 18–24 November 1995 17–18; 'Nigeria: 'Permanent transition, current violations of human rights' *Human Rights Watch* available at: www.hrw.org/reports;1996/09/01/permanent-transition (1996) (last accessed 13 October 2013).

36 Onyegbula 'The human rights situation in Nigeria since the democratic dispensation' (2001) 1 available at: unpanl.un.org/intra.doc/groups/public/document (last accessed 13 October 2013).

37 The National Human Rights Commission Decree 22 of 1995 promulgated by the late General Sanni Abacha military junta.

38 Obey *The National Human Rights Commission: The Experience of Nigeria* 5 available at: www.scu.edu.tw/hr/research/imgs.Ayo.pdf (last accessed on 20 May 2011).

39 Section 17 of the National Human Rights Commission Act of 1995.

40 The National Human Rights Commission (Amendment) Act 2010.

41 Sections 2(2)(a to g) of the National Human Rights Commission Act of 1995.

42 Section 2(3)(a) of the National Human Rights Commission Act of 1995.

43 Section 15 of the National Human Rights Commission Act of 1995.

authority in the performance of its functions.[44] It also has sufficient powers to execute its mandate effectively.[45] Generally, with a category 'A' status before the International Coordinating Committee of National Human Rights Institutions the NNHRC substantially complies with the institutional structural requirements of the Paris Principles for a potentially effective NHRC.

The legal status of socio-economic rights in Nigeria can be characterised as one of neglect. These rights are not expressly recognised or guaranteed within the constitutional framework as substantive and justiciable human rights. Instead, some of the ideals that are inherent in these rights are provided as non-justiciable fundamental objectives and directive principles of state policy under the 1999 Constitution.[46] Similarly, the enabling legislation fails to confer an express socio-economic rights mandate on the NNHRC. Arguably, the implication is that the NNHRC lacks a concrete domestic legal foundation to advance socio-economic rights in the country.

However, Nigeria bears an international legal obligation to implement socio-economic rights as a state party to the ICESCR and, in particular, the African Charter, which it has domesticated.[47] This obligation synchronises with an aspect of the mandate of the NNHRC directing it to deal with all human rights guaranteed by 'international human rights treaties to which Nigeria is a party'.[48] In addition, the enabling law further directs the NNHRC to monitor,[49] investigate[50] and provide redress and remedies to all victims of human rights violations without discrimination.[51] These provisions can be seen to create indirect avenues through which the NNHRC can legitimately advance the progressive realisation of socio-economic rights. Consequently, although the NNHRC has no explicit or robust legal mandate on socio-economic rights, it cannot justifiably eschew these rights. Nevertheless, it is submitted that the putative mandate of the NNHRC on socio-economic rights is clearly weak given the neglected legal status of

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44 Section (6)(3) of the National Human Rights Commission (Amendment) Act of 2010.
45 Section 6(1)(g) of the National Human Rights Commission Act of 1995.
46 Chapter 2 of the 1999 Constitution of Nigeria.
47 The African Charter on Human and Peoples' Rights (Application and Enforcement) Act 1983.
48 Section 5(a) National Human Rights Commission Act of 1995.
49 Section 5(b) National Human Rights Commission Act of 1995.
50 Section 5(b) National Human Rights Commission Act of 1995.
51 Section 5(c) Nigerian Human Rights Commission Act of 1995.

these rights within the domestic legal frameworks and the seeming lack of a direct legal mandate for it to promote and protect these rights.

The efforts of the NNHRC to advance socio-economic rights

The NNHRC is seen to be engaged in advancing the domestic implementation of socio-economic rights through education and advocacy, investigating and settling complaints involving socio-economic rights, and monitoring and reporting on the state's level of implementation of these rights.[52] Socio-economic rights education has featured in some of its efforts to promote general human rights awareness through workshops, seminars and meetings with law enforcement agencies, civil society groups, students, teachers, traditional leaders, women, the youth, and the less-privileged.[53] In 2012, the NNHRC established desk offices to promote the rights to education, food and healthcare. It also organised a public lecture on business and human rights, and access to food as a fundamental right. In addition, it facilitated the teaching of human rights, including socio-economic rights, as part of basic education, as well as the establishment of human rights clubs in secondary and tertiary institutions across the country.[54] Equally worthy of mention are the human rights forums and village-square meetings held away from its headquarters to reach, interact, enlighten and discuss human rights issues relevant to the local environment with community members, including local government officials, traditional and religious leaders, and the less privileged.[55]

Furthermore, the Commission's complaints process impacts on socio-economic rights advancement to some extent. In particular, some of the complaints it handles – such as unlawful termination of employment, non-payment of retirement benefits and entitlements, and child neglect and abandonment – indirectly advance the socio-economic wellbeing of the complainants.[56] On some occasions the NNHRC has maximised the complaints process to secure the provision of social goods and services, such

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52 National action plan for the promotion and protection of human rights in Nigeria 2009–2013.

53 Mbelle 'The national human rights commission of Nigeria: valuable but struggling to enhance relevance' in Paarlevliet *et al* (eds) *National human rights institutions in Africa: defenders of human rights, managers of conflict, builders of peace* (2005) 4.

54 The Nigerian National Human Rights Annual Report 2011 2.

55 Mbelle n 53 above at 43.

56 Okafor & Agbakwa 'On legalism, popular agency and "voices of suffering": the Nigerian National Human Rights Commission in context' (2002) 24 *Human Rights Quarterly* 662 714; NNHRC Annual Report 2011 47–48.

as potable water, roads, hospitals, and school buildings to communities by the multinational oil companies operating in the country.[57] It has currently launched a public enquiry into the systemic violation of the right to housing of poor people occasioned by the frequent demolition of slum dwellings by sub-state governments across the country.[58] Furthermore, although not very regular, the NNHRC also monitors and documents the state of human rights implementation in the country, including the rights to education, health, food and shelter, gender issues,[59] children rights,[60] as well as good governance and corruption[61] through a multi-stakeholder committee. The findings and recommendations in this regard are published periodically and circulated generally as the Commission's official report on the state of human rights in Nigeria.

The effectiveness of the NNHRC in advancing socio-economic rights

Although the NNHRC does not completely neglect socio-economic rights in its activities, it is, in comparison to civil and political rights, far less inclined to advance the domestic implementation of these rights. It readily hides behind the neglected domestic legal status of these rights to justifying its failure to invest relatively little effort, time and resources in the promotion and protection of socio-economic rights. The ineffectiveness of the NNHRC in addressing socio-economic rights is emerges when one considers that after more than sixteen years in existence, the NNHRC still lacks any definite policy or action plan aimed at addressing the widespread violation of these rights. It has done nothing tangible to create and sustain awareness of socio-economic rights in the country, thereby allowing ignorance of these rights across society to persist. Clearly, hosting one or two promotional workshops on socio-economic rights cannot make a significant difference in a large and densely populated country such as Nigeria.

Furthermore, ordinary Nigerians are neither aware nor convinced of the capacity of the NNHRC to handle complaints of socio-economic rights

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57 Aga 'The role played by the national human rights Commission in enhancing access of individuals, groups and communities to effective remedies from oil corporations and other multinationals when violation occurs' at 3. Available at: www.seerac.org/Publications/Aga%20paper.doc (last accessed 4 August 2014).

58 'NHRC commences public inquiries into forced evictions in June; Amnesty International queries demolition of houses' available at: http://www.nigeriarights.gov.ng/blog/category/nhrc-news.

59 Chapter 13 of the report on the state of human rights in Nigeria 2009–2010.

60 Chapter 14 of the report on the state of human rights in Nigeria 2009–2010.

61 Chapter 17 of the report on the state of human rights in Nigeria 2009–2010.

violations effectively. Apart from the fact that such complaints are few and far between in relation to civil and political rights, the NNHRC is, more often than not unable to handle them. Also, its monitoring of the implementation of socio-economic rights is extremely weak and directed at no clear and directed result. Furthermore, it does not, and never has, considered the necessity of litigating socio-economic rights against any state department. As a result, its statutory reports hardly speak to or disclose what it has or is doing to advance the implementation of socio-economic rights in the country. Thus, while the NNHRC remains a relevant institutional platform for advancing the implementation of socio-economic rights in Nigeria, it has been grossly ineffective in the performance of this role. One can but conclude that the NNHRC is relatively ineffective and has impacted far less than it potentially could have in advancing socio-economic rights implementation in the country.

The South African Human Rights Commission (SAHRC)

The institutional structure and socio-economic rights mandate of the SAHRC

The apartheid regime, which existed in South Africa between 1948 and 1994, was hated worldwide for its race-based political and social philosophy that subjected non-whites in general, and black Africans in particular, to gross abuse of human rights and socio-economic deprivation. Consequently, the need to restore human rights, dignity, and social justice to all South Africans formed part of the struggle of the political opposition led by the African National Congress to dismantle the apartheid system. Therefore, as generally expected, the political negotiations for a transition to democracy initiated by President FW de Klerk settled for a new South Africa under the rule of law, with equality and respect for human rights as the cornerstone and fundamental principles of the new Constitution. Furthermore, the new Constitution also created the SAHRC as part of an elaborate institutional framework for supporting and strengthening the democracy and social accountability in South Africa.[62]

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[62] Sections 181–194 of the Constitution of South Africa 1996; the other Chapter 9 institutions are the Public Protector; the Commission for Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; the Electoral Commission; and the Broadcasting Authority.

Unlike the NNHRC, the SAHRC is a constitutional body[63] with a stronger legal foundation.[64] Members of the SAHRC are appointed by Parliament following nomination by the President.[65] Like the NNHRC, members enjoy security of tenure and are immune from criminal and civil liability in the performance of their official functions.[66] Also, the Commission's institutional, administrative and operational independence is securely guaranteed by both the Constitution and the enabling law.[67] Generally, the SAHRC operates freely without any noticeable interference from the state, and is generally seen as one of the relatively well-resourced and most active NHRCs in Africa. Furthermore, the fact that it enjoys a category 'A' status with the International Coordinating Committee of National Human Rights Institutions, as does the NNHRC, means the SAHRC complies with the Paris Principles in relation to its institutional structure.

Of all NHRCs in Africa, the SAHRC has the clearest and most comprehensive mandate on socio-economic rights. Apart from a general mandate to promote and protect all categories of human rights,[68] the SAHRC also has a special constitutional mandate to monitor, on a yearly basis, the implementation of socio-economic rights by the state.[69] This special mandate is reinforced by the express recognition of a broad range of socio-economic rights under the Constitution's Bill of Rights, such as the right of access to adequate housing and prohibition of arbitrary eviction or demolition of homes;[70] the right of access to health care services, including reproductive health care, sufficient food, water, social security and social assistance;[71] and

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63 Section 181 of the Constitution of South Africa 1996.
64 Section 20 of Schedule 6 to the Constitution of South Africa 1996 .
65 Sections 193(4)(a) and 193(5)(a) & (b) of the 1996 Constitution of South Africa.
66 Section 17(3) of the Human Rights Commission Act of 1994.
67 Section 181(2) of the Constitution of South Africa 1996.
68 Section 184(1)(a)(b) & (c) of the 1996 Constitution of South Africa.
69 Section 184(3) of the Constitution of South Africa 1996; Heyns 'Taking socio-economic rights seriously: the "reporting procedure" and the role of the South African human Rights commission in terms of the new constitution' (1999) 30 *De Jure* 195 197; Khoza 'Do socio-economic rights require different monitoring and advocacy strategies from other rights? A review of selected sections in the Human Rights Quarterly' (2005) 6 *Economic and Social Rights Review* 16. Newman 'Institutional monitoring of social and economic rights: A South African case study and a new research agenda' (2003) 19 *South African Journal on Human Rights* 189 199.
70 Section 26 of the Constitution of South Africa 1996.
71 Section 27 of the Constitution of South Africa 1996.

the right to education,[72] which the state is under a constitutional obligation to respect, protect, promote and fulfil.[73]

Arguably, the constitutionalisation of socio-economic rights places a legal obligation on the SAHRC to advance these rights. Thus, the primary advantage for the SAHRC is that, unlike the NNHRC, it has no compelling need to resort to external, secondary or indirect legal sources other than the Constitution to justify its mandate and actions on socio-economic rights. However, through it recent ratification of the ICESCR, South Africa has reinforced its constitutional obligation to advance socio-economic rights.[74]

The efforts of the SAHRC in advancing socio-economic rights

The SAHRC has proven to be different from other NHRCs, particularly in Commonwealth Africa, with regard to taking effective action to implement socio-economic rights. For example, unlike the NNHRC, the SAHRC has a clear plan of action which gives notable attention to the promotion and protection of socio-economic rights with particular emphasis on education and advocacy, the amicable resolution of complaints, as well as regular monitoring and reporting on the state's compliance with its socio-economic rights obligations.[75] Furthermore, apart from addressing systemic violations of socio-economic rights through public hearings, the Commission also litigates these rights in the regular and equality courts.[76]

Additionally, the SAHRC undertakes human rights education and training as part of its mandatory functions under the Constitution to empower and create awareness of socio-economic rights among South Africans.[77] It has

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72 Section 29 of the Constitution of South Africa 1996.

73 Section 7(2) of the Constitution of South Africa 1996.

74 Chenwe & Hardower 'Promoting socio-economic rights in South Africa through the ratification and implementation of the ICESCR and its Optional Protocol' (2010) 11 *Economic and Social Review* 3; Van der Burg 'Application of international law in South African case law and the importance of ratification of the ICESCR' (2012) 13 *Economic and Social Rights Review* 9.

75 SAHRC Strategic Business Plan (2010–2014) available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14 (last accessed 14 October 2014).

76 Section 184(3) of the 1996 Constitution of South Africa; Heywood 'Preventing mother-to-child HIV transmission in South Africa: background, strategies and outcomes of the Treatment Action Campaign case against the Minister of Health' (2003) 19 *South African Journal on Human Rights* 278 299–300. For instance, the commission reportedly litigated seventeen matters before the Equality Magistrate's and the High Courts between 2011 and 2012: 2012 *SAHRC Annual Report* 29.

77 184(1)(a) of the Constitution of South Africa 1996.

done this, and continues to do so, through a number of channels, including workshops, conferences, seminars, and community outreach meetings with a broad spectrum of the population.[78] Besides institutionalising human rights education in the school system,[79] the SAHRC also creates awareness through a number of publications.[80] Generally, South Africans now have a better understanding of their socio-economic rights through the human rights education programmes of the SAHRC.

Aside from human rights education, the SAHRC has been active in monitoring the state's implementation of socio-economic rights.[81] It collects and collates information from relevant state departments on the measures they have taken to realise these rights and the challenges they face.[82] This information is then processed against relevant legal, policy and budgetary benchmarks and the findings and recommendations are presented to Parliament in the form of a 'Social and Economic Rights Report'.[83] From 1996 to date, the SAHRC has carried out eight socio-economic rights monitoring exercises.[84] On the positive side, the monitoring exercises have been useful in exposing the level of implementation of these rights by highlighting deficiencies in legal, policy and administrative action, to which the state needs to attend. However, scholars have expressed dissatisfaction

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78 Cardinas 'Constructing rights? Human rights education and the state' (2005) 26 *International Political Science Review* 363 371–374.

79 *Id* at 371.

80 The Commission has a training manual titled: *Building a culture of human rights*, which outlines the bill of rights in questions and answers format with samples of everyday illustrations. The manual answers such as 'what are the human rights protected in the bill of rights? Can the bill of rights be limited?

81 Heyns n 69 above at 197; Khoza n 69 above at 16.

82 Newman 'Institutional monitoring of social and economic rights: A South African case study and a new research agenda' (2003) 19 *South African Journal on Human Rights* 189 199; SAHRC Report on Economic and Social Rights 2006–2009 5 available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14 (last accessed 14 October 2014).

83 Report on Economic and Social Rights 2006–2009 2 available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14 (last accessed 14 October 2014).

84 The first exercise covered the period 1994 to 1998 and the report was published in 1998. The second exercise covered the period 1998–1999 but the report was published in 2000. The third exercise covered the period 1999 to 2000 and the report was released in 2001. The forth exercise covered the period 2000 to 2001 and the report was released in 2002. The fifth exercise covered the period 2002 to 2003 and the report was published in 2004. The sixth exercise covered the period 2004 to 2006 and the report was released in 2007, and the seventh exercise covered the period 2006 to 2009 and the report was released in 2010. The eighth exercise covered the period 2011 and the report was published in 2012.

with the way in which the Commission administers the socio-economic rights monitoring exercise, particularly, the consistent alienation of NGOs and other credible stakeholders from the exercise despite doubt as to its impact.[85] Clearly, the execution of the SAHRC's article 183(4)-mandate has been irregular, with an average of one report every second year, rather than the anticipated annual report.

The SAHRC has also used its complaints procedure to advance the implementation of socio-economic rights.[86] Through this mechanism it receives, investigates and resolves complaints of the violation of socio-economic rights – including those against state departments, non-state actors, and corporate persons.[87] The record shows that socio-economic rights constitute the top ten most frequent complaints the SAHRC handles.[88] It would appear that the process is frequently used by ordinary people to resolve disputes and access socio-economic justice.[89] For example, the process has restored an evicted widow to her home;[90] restored water services to a community;[91] and re-admitted an expelled learner to school.[92]

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85 Klaaren 'A second look at the South African Human Rights Commission, access to information, and the promotion of socioeconomic rights' (2005) 27 *Human Rights Quarterly* 539 543.

86 Section 182(4) of the Constitution of South Africa 1996; Section 9 of the Human Rights Commission Act of 1994; the preamble of the Act also states that the Commission can 'investigate any alleged violation of human rights'.

87 By virtue of its general mandate over the bill of rights as well as over all state entities, both natural and juristic persons under Section 8 of the Constitution of South Africa 1996.

88 Maclain 'The SA human rights commission and socio-economic rights: facing the challenges' (2002) 3 *Economic and Social Rights Review* 3–9; 24. For instance, out of the 647 complaints the Commission treated between 2006 and 2007, twenty six were on the right to education, thirty were on healthcare, food , water and social security, while twenty eight, nine and fifty-five were on housing, environment and equality respectively.

89 SAHRC Annual Report 2011 28 available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14 (last accessed 14 October 2014).

90 *Frangeline Dikgale v Limpopo* Unreported: SAHRC Annual Report 2011 28 available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14. (last accessed 14 October 2014).

91 *Esteenskuil Boereverengiging v Northern Cape* Unreported: SAHRC Annual Report 2011 28 available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14. (last accessed 14 October 2014).

92 *Tshweu v Bergsig Academy* NW/2011/002 Unreported: SAHRC Annual Report 2011 28 available at: http://www.sahrc.org.za/home/iindex.ph?ipkContentID=13&ipkMenuID=14. (last accessed 14 October 2014).

As a related measure, the SAHRC uses public inquiries to address and expose systemic denial of socio-economic rights. As McClain notes, apart from providing a participatory forum for diagnosing social problems, the findings and recommendations of these inquiries are important tools for exerting social pressure on the state to fulfil its socio-economic rights obligations.[93] To date the SAHRC has conducted public enquires into the socio-economic rights to education, health and food, as well as the rights to housing, the living conditions in farming communities, and the right to water and sanitation.

Finally, unlike the NNHRC, the SAHRC often engages in litigation processes before the courts to advance the implementation of socio-economic rights. Although resort to litigation is quite rare, it has occasionally employed this option – either directly as a contestant, or simply as a friend of the court – in relation to socio-economic rights.[94] Furthermore, on at least one occasion, the SAHRC has complemented judicial efforts by supervising the implementation of a judicial order against the state for the implementation of socio-economic rights.[95]

The effectiveness of the SAHRC in advancing socio-economic rights implementation

Notwithstanding its manifold efforts, the SAHRC has had less impact than would generally be expected. Overall, the SAHRC has been ineffective in its dealings with the state, which pays scant attention to its reports, findings, and recommendations on the implementation of socio-economic rights. Also, scholars and civil society, in particular, have expressed reservations as to its apparent failure to use the socio-economic rights monitoring process to achieve the intended result of advancing socio-economic rights accountability by the state.[96] Equally worthy of note as a downside, is the apparent reluctance of the SAHRC to litigate violations of socio-economic

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93 Maclain 'The SA human rights commission and socio-economic rights: facing the challenges' (2002) 3 *Economic and Social Rights Review* 4–5.

94 Mbazira 'Translating socio-economic rights from abstract rights to fully fledged individual rights: lessons from South Africa' (2006) 12 *East African Journal of Peach and Human Rights* 183.

95 Ebadolahi 'Using structural interdicts and the South African Human Rights Commission to achieve judicial enforcement of economic and social rights in South Africa' (2008) 83 *New York University Law Review* 156 158.

96 Klaaren n 85 above at 543.

rights in the regular courts. Arguably, the minimalist approach to socio-economic rights litigation has not helped to advance South Africa's jurisprudence on the constitutional responsibility of the state to implement these rights. However, although the level of impact may not be as satisfactory as generally anticipated, no one can deny the tangible engagements of the SAHRC in promoting and protecting socio-economic rights in the country. Arguably, when compared to other NHRCs in sub-Saharan Africa, the SAHRC is rated considerably higher in terms of level of commitment, effort and effectiveness in advancing the domestic implementation of socio-economic rights.

The Ugandan National Human Rights Commission (UHRC)

The institutional structure and socio-economic rights mandate of the UHRC

The establishment of the UHRC was first proposed by the Commission of Inquiry into Violations of Human Rights, set up President Yoweri Museveni to investigate and collate all aspects of human rights violations, breaches of the rule of law, and excessive abuses of power in Uganda between 1962 and 1986.[97] This proposal, which was intended to prevent the recurrence of the horrendous violations of human rights during this period, was accepted by the Uganda Constitutional Commission and entrenched in section 51 of the 1995 Constitution of Uganda. Therefore, the UHRC was established in the course of the country's transition from an authoritarian and repressive political and legal order, to a constitutional and democratic order.

Like the SAHRC, the UHRC is a constitutional body. Members are appointed by the President and confirmed by Parliament.[98] Also, apart from comprehensive powers, the UHRC also enjoys institutional, administrative, and financial autonomy: it is subject to the control of no authority other than the law and the Constitution.[99] Besides a stable tenure in office, the Commissioners are immune from civil proceedings for acts performed in good faith in the performance of their official responsibilities.[100] By and large, the institutional structure of the UHRC substantially conforms to the

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97 Matshekga 'Toothless bulldogs? The human rights commissions of Uganda and South Africa: a comparative study of their independence' 2002 *African Human Rights Law Journal* 68 80; Sekaggya 'The protection role of Uganda Human Rights Commission' in Ramcharam (ed)*The protection role of national human rights institutions* (2005) 165.

98 Section 51(2) of the Constitution of Uganda 1995.

99 Section 54 of the Constitution of Uganda 1997.

100 Section 14 of the UHRC Act 1997.

requirements of the Paris Principles and, therefore, puts it in a position to be effectively functional.[101]

Like the NNHRC, the UHRC does not have an explicit mandate on socio-economic rights. The Constitution of Uganda 1995, and the Uganda Human Rights Commission Act, 1996, generally oblige the UHRC to investigate complaints of any human rights violation;[102] to establish a continuing programme of research, education and information to enhance respect of human rights;[103] and to monitor the government's compliance with international treaty and convention obligations on human rights.[104] Arguably, although it has no express mandate on socio-economic rights, taken together, these three specific functions give the Commission competence over all categories involving human rights violations. However, the Constitution guarantees only the right to education as a substantive socio-economic right.[105] All other related rights, such as the right to health and the right to an adequate standard of living, including, food, shelter and clean water, are expressed as aspirational national objectives and fundamental principles.[106] This means that the right to education aside, the UHRC has no direct constitutional mandate to advance the realisation of socio-economic rights. Therefore, like the NNHRC, it can only justify its actions on these socio-economic rights on the basis of the ICESCR, the African Charter, and other related international treaties the country has ratified.[107] This view resonates with Ssenyonjo's view that Uganda's constitutional obligation to comply with international laws, treaties, and convention obligations, constitutes a framework for providing appropriate measures for achieving the implementation of socio-economic rights in Uganda.[108]

The efforts of the UHRC in advancing the implementation of socio-economic rights

Human rights education and training, the complaint resolution process, and monitoring the state's implementation of socio-economic rights, are some of the measures the UHRC uses to advance the domestic implementation of

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101 Matshekga n 97 above at 74.
102 Section 52(1)(a) of the Constitution of Uganda 1995; s 8(1)(a) of the UHRC Act 1997.
103 Section 52(1)(c) of the Constitution of Uganda 1995; s 8(1)(d) of the UHRC Act 1997.
104 Section 52(1)(h) of the Constitution of Uganda 1995; s 8(1)(i) of the UHRC Act 1997.
105 Section 34 of the Constitution of Uganda 1995.
106 Chapter 5 of the Constitution of Uganda 1995.
107 Section 286 of the Constitution of Uganda 1995.
108 Ssenyonjo *Economic, social and cultural rights in international law* (2009) 173.

socio-economic rights.[109] It carries out human rights education through training workshops, seminars, conferences, radio talks, spot messages, television shows, and other grassroot outreach activities and human rights day celebrations.[110] Generally, specific social groups – such as security agencies, public servants, judges, prison authorities, local clerics, and community leaders, district officers, health workers, school children and teachers[111] – are educated, trained and empowered to know their human rights and how to access relevant remedies through the UHRC when their rights have been violated.[112] Although there are no programmes targeting socio-economic rights as such, the use of a rights-based approach to development, policy-making, and implementation also forms a positive aspect of the UHRC's human rights education programme in relation to advancing socio-economic rights implementation.[113]

The UHRC also periodically monitors the level of the state's implementation of socio-economic rights in Uganda.[114] The socio-economic rights it routinely monitors and reports on include the right to education, the right to health, the right to housing, and the right to an adequate standard of living.[115] It also monitors the implementation of related rights, such as children's welfare rights,[116] the rights of persons living with disabilities,[117] and the living conditions of prisoners and other persons detained in prisons and other detention facilities.[118] Furthermore, the UHRC monitors specific government policies and development plans and programmes, which enables it to make inputs to government policy-making and implementation in terms

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109 Section 52(1)(c)(e)(g) of the Constitution of Uganda 1995; Section 8(1)(e) of the UHRC Act 1997.

110 14th UHRC Annual Report 2012 36 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

111 15th UHRC Annual Report 2013 55–67 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

112 Sekaggya n 97 above at at170.

113 UHRC's handbook on the *human rights based approach guidelines to national development planning/programming* (2008) 3.

114 Section 52(1)(h) of the Uganda Constitution 1995; Section 8(1)(I) of the UHRC Act 1997.

115 15th UHRC Annual Report 2012 at 90–114 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014.

116 10th UHRC Annual Report 2007 71–80 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

117 12th UHRC Annual Report 2009 21 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

118 Section 51(1)(a) of the Constitution of Uganda 1995.

of their implications for the realisation of socio-economic rights.[119] The reports are generally contained in its annual report.[120] In addition, the UHRC leverages its relationship with Parliament to make positive inputs into proposed bills and the government's social-policy outcomes.[121]

Furthermore, the UHRC operates a complaints mechanism which includes the handling of disputes involving socio-economic rights. Despite the limitations on its protective mandate, it has been able to apply this procedure to resolve disputes over the denial of child maintenance, basic education, remuneration and pension, as well as the violation of the right to food, shelter and medical care.[122] Although over 80 per cent of the complaints it receives relate to civil and political rights, it has also done well by providing effective remedies with respect to violations of the right to education and children's welfare rights which made up over ten per cent of complaints received between 2007 and 2013.[123] Finally, as a related measure the Commission also operates a quasi-judicial tribunal through which it dispenses justice to victims of human rights violations. Although the Commission's jurisdiction is in the main limited to civil and political rights, it has adjudicated several disputes related to the violation of the right to education and children's welfare rights, and has ordered compensation for many such victims.[124]

The UHRC is more active than the NNHRC in advancing state implementation of socio-economic rights. It has demonstrated an increasing level of engagement despite its limited mandate over these rights. The UHRC is therefore a good example of the potential of NHRCs to advance

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119 Omara 'The role of national human rights institutions in pro-human rights policies: The Uganda experience.' *A presentation at panel of discussion at social forum organized by the UN sub-committee on protection and promotion of human rights* Geneva 21 July 2005 3.

120 15th UHRC Annual Report 2012 at 90–114 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

121 For example, the Uganda's Poverty Eradication Action Plan; the Voluntary Guidelines on the implementation of the right to food; the National Health Policy (2010–2020); the Health Sector Strategic Investment Plan (2010/2011–2014/2015).

122 15th Uganda HRC Annual Report 2013 4–5 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

123 15th Uganda HRC Annual Report 2013 143 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

124 Makubuya 'National human rights institutions under fire: The Uganda human rights commission on the brink' (2004) 10 *East African Journal of Peace and Human Rights* 78 87.

the domestic implementation of socio-economic rights even where domestic legal frameworks neglect them.

The effectiveness of the UHRC in advancing the implementation of socio-economic rights

This is not to say that the UHRC has been as effective as it could have been in advancing socio-economic rights. Apparently, it has no strategic action plan on socio-economic rights and, therefore, is not doing enough to promote and protect these rights. For example, although socio-economic rights education is not neglected entirely, the extent of coverage is clearly minimal and overwhelmingly skewed in favour of civil and political rights.[125] Even the grassroot outreach programmes are targeted more at overcoming entrenched cultural practices violating women and children rights, rather than advancing socio-economic rights as such.[126] Its complaints process suffers from a similar degree of inactivity in relation to socio-economic rights. While the process accommodates all categories of human rights, it hardly deals with socio-economic rights complaints, save for the right to education and children's welfare rights.[127] Furthermore, having a limited jurisdiction, the tribunal of the UHRC is almost entirely irrelevant as a platform for advancing socio-economic rights. So also is its effort to monitor the state's implementation of socio-economic rights, which is *ad hoc*, lacks legal force, and hardly impacts as an accountability mechanism.

FACTORS ENHANCING THE ROLE AND EFFECTIVENESS OF NHRCS IN ADVANCING THE DOMESTIC IMPLEMENTATION OF SOCIO-ECONOMIC RIGHTS

The fact that NHRCs are engaged in one way or another in advancing the domestic implementation of socio-economic rights is clear. However, what is at issue is whether these institutions have been living up to their potential. Arguably, it is clear from the empirical assessment that the three NHRCs can be effective in actualising their mandates on socio-economic rights under a given set of enabling factors. The most important of these factors are: (1) explicit constitutional recognition of socio-economic rights; (2) explicit legal

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125 Sekaggya n 97 above at 113.

126 14th UHRC Annual Report 2011 6 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

127 For instance, in the five consecutive years under scrutiny, the Commission reportedly handled only six complaints on the right to housing, twenty-three on the right to health, one on the right to food, and none on the right to water. The right to education and children's welfare rights appear to have fared relatively better.

NHRC mandate on socio-economic rights; (3) strong institutional capacity; and (4) adequate support from other accountability institutions. These factors are now analysed, on the basis of the review above.

Explicit constitutional recognition of socio-economic rights as justiciable guarantees

The prevailing practice among states is to provide socio-economic rights either explicitly as substantive rights, or implicitly as directive principles of state policy.[128] When explicitly entrenched in a national constitution as justiciable guarantees, socio-economic rights become claim-rights in the hands of rights holders that must be implemented and are, therefore, enforceable against the state as a duty-bearer.[129] Arguably, this is a major factor that potentially enhances the role and effectiveness of NHRCs in advancing the domestic implementation of these rights. There is little doubt that the SAHRC has been able to advance the implementation of socio-economic rights to a greater extent than the NNHRC and the UHRC. One of the reasons for this edge is that these rights are available in concrete terms as justiciable guarantees within the South African constitutional framework. This logic also applies to the way in which the UHRC is able to deal with right to education in Uganda, which is the only substantive socio-economic right guaranteed under the Constitution as a justiciable fundamental human right. Conversely, it is submitted that the lack of explicit constitutional recognition of socio-economic rights in Nigeria, restricts the role and effectiveness of the NNHRC in advancing the domestic implementation of these rights. This also explains why the UHRC is largely ineffective in promoting and protecting all socio-economic rights other than the right to education. The fact that Nigeria and Uganda have ratified the ICESCR is immaterial since without domestication these rights are without legal force within the domestic legal framework, and cannot serve as a legal basis for the institution of enforceable actions by the respective NHRCs to secure compliance.[130] Although Nigeria has domesticated the African Charter, it remains largely ineffective in relation to socio-economic rights due to its subordination to the Constitution,[131] which deprives these rights of domestic

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128 Heyns & Kaguongo n 5 above at 673–717.

129 Hertel & Minkler 'Economic rights: the terrain' in Hertel & Minkler (eds) *Economic rights conceptual, measurement and policy issues (*2007) 25.

130 Minkler 'Economic rights and political decision making' (2009) 32 *Human Rights Quarterly* 368 382.

131 The African Charter on Human and Peoples' Rights (Application and Enforcement) Act 1983.

legal force.[132] Therefore, enjoying so neglected a legal status, socio-economic rights do not exist as substantive human rights and are therefore incapable of being attached, in concrete terms, to the mandates of the NHRCs in Nigeria and Uganda. This, by implication, limits, weakens, or even completely excludes these NHRCs from exercising material jurisdiction or competence over socio-economic rights.[133]

Explicit legal mandate on socio-economic rights for NHRCs

Generally, the human rights mandate of most NHRCs integrates all categories of human rights. Thus, NHRCs could, as a matter of theory and logic, act on socio-economic rights even without an explicit legal mandate to do so. However, the practise among states is to tie the mandate of NHRCs to the human rights expressly recognised by their constitutions as substantive human rights. Where this is so, socio-economic rights are excluded from the mandates of NHRCs in countries without a legal or constitutional guarantee of socio-economic rights. This view is supported by a number of arguments. First, an authority not expressly given under a legal instrument may be difficult to exercise or justify as lawful, especially if challenged. While NHRCs could interpret their mandates creatively to incorporate socio-economic rights, the absence of an explicit legal mandate means that a narrow interpretation excluding socio-economic rights is also possible, and is often followed under the influence of the legal culture and state practice.

Second, without an explicit mandate, Parliament may be neither legally obliged nor inclined to provide statutory funding for NHRCs to advance socio-economic rights. With limited funds, therefore, NHRCs will be forced to prioritise civil and political rights in their activities and exclude socio-economic rights even where they have an implicit mandate, as they will have little reason to extend their mandates beyond that which is clearly spelt out by the enabling law. Furthermore, an NHRC could assume competence over socio-economic rights on the basis of the ICESCR and other relevant international treaties a specific state has ratified. However, an implicit mandate on socio-economic rights, even if legally justified, remains weak

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[132] Meclem 'Social rights in Canada' in Barak-Erez & Gross (eds) *Exploring social rights. between theory and practice* (2011) 226–227.

[133] Cadenas National human rights institutions and state compliance' in Goodman & Pelgram (eds) *Human rights, state compliance, and social change: assessing national human rights institutions* (2012) 1 41.

and ineffective if not effectively domesticated.[134] As Galligan and Sandler correctly argue, when human rights standards originate from outside a national system, they lack strong domestic legitimacy, and this weakens the capability of national institutions to advance their implementation.[135]

As is evident from the selected NHRCs, the SAHRC has an explicit constitutional mandate on socio-economics rights as against the NHRCs of Nigerian and Uganda, which have no explicit legal or constitutional competency on socio-economic rights. With a clear and direct constitutional mandate, the SAHRC is and has been more forceful in promoting and protecting socio-economic rights than the NNHRC and the UHRC. Arguably, this factor contributes significantly to the relative inactivity and ineffectiveness of the NNHRC and UHRC in advancing the implementation of socio-economic in Nigeria and Uganda respectively.

Strong institutional structure and operational capability

Adequate powers

Although the Paris Principles generally serve as yardstick for determining the potential effectiveness of NHRCs, when dealing with socio-economic rights the level of compliance with these standard factors must be higher than the minimum standards. For example, NHRCs should not merely have the power to summon witnesses; they should also have the power to issue interim preservative orders pending the final determination of socio-economic rights complaints. With such powers, NHRCs could prevent unlawful evictions, cuts in electricity or water supply, the expulsion of learners, and generally preserve the rights of complainants pending settlement. This would certainly enhance their role and effectiveness in relation to socio-economic rights.

A related and equally important factor is the power of NHRCs to issue binding and enforceable decisions. Without binding powers, the general practice is for NHRCs to orchestrate appeals and engage in lobbying and advocacy in an attempt to secure states' compliance with their findings, decisions, and recommendations. However, these soft enforcement

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134 For instance, Nigeria has domesticated the African Charter but because it is subordinated to the Constitution, the socio-economic rights guaranteed under the African Charter still remains legally unenforceable.

135 Gilligan & Sandler 'Implementing human rights' in Halliday & Schmidt (eds) *Human rights brought home: socio-legal perspectives on human rights in the national context* (2004) 23.

mechanisms have proven largely ineffective because states bear no legal obligation and suffer no sanctions for failing to comply. A state's disregard for the findings, decisions, and recommendations of an NHRC reduces the relevance of that NHRCs by undermining its effectiveness.[136] Arguably, NHRCs without powers to make binding decisions and recommendations, or whose reports are not fit for parliamentary consideration and appropriate action, are incapable of making any significant impact with regard to advancing the implementation of socio-economic rights.

High level of institutional independence and functional autonomy

The Paris Principles emphasise the need for NHRCs to be institutionally independent and functionally autonomous as a guarantee for their effectiveness. However, there is more to meeting this requirement and practically enhancing the operational effectiveness of NHRCs than simply providing for their independence and autonomy in enabling legislation. Beyond a supportive legal framework, the composition, method of appointment of members, and level of funding are important factors for securing their practical independence and functional autonomy. For instance, the composition is very important in determining the areas of focus of NHRCs. Any membership that does not consider socio-economic rights as important will neglect these rights in favour of civil and political rights. Arguably, this has been the experience with the NNHRC and the UHRC. Also, a state-dominated appointment process is incapable of producing independent NHRCs that can exert their authority and influence effectively. Irrespective of pretentions to the contrary, such members will remain loyal to the socio-political and ideological direction of the government, which in countries such as Nigeria and Uganda are not receptive to socio-economic rights. Furthermore, NHRCs without adequate funding cannot be functionally independent and operationally effective. Inadequate funds will cause NHRCs to prioritise their formally manifested mandate and invariably focus on those rights over which they have explicit competence rather than spread their funds thinly to cover a much broader array of human rights.[137] Inadequate funding also diminishes the operational capacity and efficiency of NHRCs and impairs their ability to deliver effectively on socio-economic

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[136] Reif 'Building democratic institutions: the role of national human rights institutions in good governance and human rights protection' (2001) 13 *Harvard Law Review* 1 20.

[137] Hatchard 'The inter-relationship between Commonwealth human rights commissions and other national human rights institutions' (2011) 15 available at: http://www.britishcouncil.org/governance-report061003.doc (last accessed 12 October 2014).

rights. For instance, due to limited funding the SAHRC has an inadequate presence across the country, lacks competent staff,[138] is unable to investigate and resolve complaints timeously, and generally to function at an optimal level.[139]

Adequate support and cooperation from other relevant state institutions

NHRCs are not alone in the business of advancing the domestic implementation of socio-economic rights. Other public institutions such as the courts and parliament also contribute in one way or the other to ensure states' accountability for socio-economic rights. For instance, where socio-economic rights are justiciable then the courts are indispensable platforms for NHRCs to advance the rights of victims to socio-economic justice and effective remedies through litigation. This situation creates a role for NHRCs to litigate socio-economic rights, and a duty for the courts to entertain such cases and provide appropriate remedies. It also creates a role for NHRCs to work towards strengthening the knowledge and capacity of judges, lawyers and litigants to litigate these rights. Thus, apart from making appropriate use of this platform to protect socio-economic rights, the level of cooperation and support they get from the courts is an important element in enhancing the role and effectiveness of NHRCs.

Also, the attitude of parliament towards NHRC is also important. Parliament can ignite the role and effectiveness of NHRCs in several ways: it can ensure that NHRCs are given an explicit mandate on socio-economic rights; effect constitutional changes to provide for socio-economic rights as justiciable guarantees; ensure adequate budgetary provision for NHRCs; consider and debate the annual and special reports of NHRCs on socio-economic rights; and support NHRCs to enforce their decisions and recommendations through parliamentary oversight of relevant line departments. The lack of adequate cooperation and support from parliament for NHRCs and their activities in the sphere of socio-economic rights is commonly experienced by NHRCs across the world. Apart from frequent budgetary cuts, the reports submitted to parliament are often not considered. Furthermore, important recommendations requiring parliamentary action, such as domesticating the ICESCR, ratifying the Optional Protocol to the ICESCR, the

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[138] 14th UHRC Annual Report 2011 47 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

[139] 15th UHRC Annual Report 2012 19 available at: http://www.uhrc.ug/resources (last accessed 12 October 2014).

constitutionalisation of socio-economic rights, and the enactment of framework legislation on socio-economic rights are often ignored. Such a laid-back attitude from parliament towards the efforts of NHRCs is unhealthy and only serves to hinder the role and effectiveness of NHRCs in relation to advancing the domestic implementation of socio-economic rights.

CONCLUSION

The special status that NHRCs occupy between the state, civil society and the international human rights system makes them eminently suitable non-judicial mechanisms for advancing the domestic implementation of socio-economic rights. However, it is overly optimistic to expect NHRCs to promote and protect socio-economic rights simply because they have, or are assumed to have, an integrated mandate on human rights generally.

The overview in this article provides some evidence that the formal legal requirements of constitutionally recognised socio-economic rights, and their explicit inclusion in the scope of an NHRC's mandate are *necessary* conditions to ensure the enhanced effectiveness of these Commissions. However, the extent to which the UHRC has been able to carve out at least some space for itself in respect of these rights, despite a deficient legal framework, suggests the importance of the prevailing legal culture, which opens up the possibility of activism within the ranks of an NHRC. Some tentative advances have been made based on an implicit competence derived from the ratification of the ICESCR, the African Charter, and other relevant international treaties on socio-economic rights by these states. With the constitutionalisation of socio-economic rights and the granting of an express constitutional mandate to the SAHRC, South Africa presents an example of the important role of these formal legal factors. However, their presence is also a product of the prevailing legal culture relevant to the domestic implementation of socio-economic rights.

NHRCs all operate within the national economic, political and social context. Thus, their functions, areas of focus, activities, and attitude in relation to these rights are shaped or determined by the prevailing legal and political culture. Arguably, this is irrespective of what the law or principles establishing or guiding these institutions might provide. For example, despite the robust functions of the NNHRC and UHRC, the legal and political authority that established them has never expressly acknowledged their relevance in respect of socio-economic rights. Besides, the domestic legal and political culture is not receptive to notions of socio-economic

rights and what they entail; hence they have been and are still denied a meaningful mandate in respect of these rights.

Even if recognition of constitutional status and an explicit legal mandate are necessary, they are *not sufficient* to guarantee a greater role for NHRCs in realising socio-economic rights. Other factors – related to the politico-legal context – such as institutional independence and functional autonomy and the level of support and effective supplementary services that NHRCS receive from the judiciary and parliament, are also important. Arguably, the reality of inadequate operational independence and funding can force NHRCs to neglect socio-economic rights as against civil and political rights. Furthermore, NHRCs not supported with an effective judicial system and an active and committed parliament can also not play their role in relation to socio-economic rights effectively.

Against this background, we conclude that the confluence of the following factors would see the greatest improvement in the role of NHRCs in advancing the domestic implementation of socio-economic rights: the constitutionalisation of socio-economic rights; giving an explicit legal mandate on socio-economic rights to NHRCs; the strengthening the institutional independence and capability of these institutions, especially in terms of providing adequate institutional, operational and financial independence and autonomy; and support of NHRCs by other public accountability institutions, such as the judiciary and parliament.

Although the conclusions are valid for the NHRCs that were investigated, the article also raises questions about applying these conclusions beyond the three focus countries. While some tentative suggestions in this direction have been made, in order to validate any claim on the applicability of the article's basic theoretical assumptions and conclusions to NHRCs across Commonwealth Africa, in Francophone and Lusophone Africa, and beyond, the scope of the research needs to be expanded to include other African – and non-African – countries.