

National Human Rights Institutions and Sustainable Development with Specific Reference to Selected African Examples

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Abstract

That National Human Rights Institutions (NHRIs) play an important role in the protection and promotion of human rights is a well-known fact. This has been widely acknowledged by the United Nations (UN). Also well-known is the fact that several African countries have enacted new constitutions during the last two to three decades. One of the most salient features of those new constitutions is that they establish NHRIs, among other things. Given their unique role and mandate, these NHRIs can and do play an important role in the realisation of the sustainable development goals contained in the UN 2030 Agenda for Sustainable Development. Adopting a case study approach, this article explores the role NHRIs have played in the promotion and protection of human rights in selected African countries and implications for sustainable development in those countries. The main argument is that there are several lessons African countries can learn from each other on how their NHRIs can more meaningfully play that role. Accordingly, best practice and comparative lessons are identified and it is recommended that NHRIs can contribute to sustainable development more meaningfully if they can make themselves more relevant, credible, legitimate, efficient and effective.

Keywords: Human rights; sustainable development; constitutions; African countries

Introduction*

The important role National Human Rights Institutions (NHRIs) play in promoting and protecting human rights cannot be overemphasised. Such role has, in fact, been acknowledged by the UN through several resolutions.¹ On 15 September 2015, the same UN General Assembly adopted the 2030 Agenda for Sustainable Development which makes explicit references to human rights throughout its text. The 2030 Agenda for Sustainable Development anchored the Sustainable Development Goals (SDGs) which are the core of a new programme for development but which also, among other things, ‘seek to realize the human rights of all’.² In other words, the 2030 Agenda and human rights are mutually reinforcing. NHRIs, it is submitted, have a unique mandate and are well-placed to play an important role in the implementation and follow-up of the Agenda, and the realisation of SDGs.

Over the last two to three decades, several African states have enacted new constitutions mainly with the intention of transforming themselves into democratic societies. In the context of human rights protection, most of these constitutions contain bills of rights, for example those of the countries discussed in this article. They also establish NHRIs. The purpose of this article is to explore the role NHRIs have played in the promotion and protection of human rights in selected African countries and implications for sustainable development in those countries. The article adopts a case-study approach which entails a discussion of human rights institutions from selected African countries.

The countries chosen for discussion are South Africa, Namibia, Uganda and Kenya. The choice of these countries is based on several factors: first, these countries have much in common, including the fact that except Namibia, they are all former British colonies. Furthermore, except Kenya, whose Constitution was adopted in 2010, all the other countries adopted their current constitutions in the 1990s: South Africa in 1996, Uganda in 1995 and Namibia in 1990. These constitutions exude some common features: they contain bills of rights; they establish national human rights institutions; and they recognise human rights as a cornerstone of constitutional democracy which marks a significant departure from the past. Moreover, these states have enjoyed, from a comparative perspective, relative peace and stability with little or no political violence

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¹ For example Resolution 48/134 which laid down a number of principles (known as the Paris Principles) relating to the status of such institutions and Resolution 2003/76 of the United Nations Human Rights Commission which reaffirmed the importance of the development of effective, independent, pluralistic national institutions and encouraged states to establish or, where they already exist, to strengthen such institutions.

² United Nations, ‘Transforming our World: The 2030 Agenda for Sustainable Development’ <<https://sustainabledevelopment.un.org/post2015/transformingourworld>> accessed 8 July 2019.

in recent years, which is a testimony of the credibility of their political processes and institutions, a rare occurrence in most other African political systems and structures.

On the other hand, there are sufficient social, political, economic and developmental differences between these countries to justify comparison. It should be noted, moreover, that ‘in terms of comparative research, there are many benefits to be gained from cross-national studies – including a deeper understanding of how different countries do things in the context of differing political, cultural and socio-economic circumstances.’³ Accordingly, it is argued, the similarities and differences between the countries in this study make them good examples that can offer invaluable lessons for each other as well as the broader African continent. Ultimately, therefore, best practice and comparative lessons are identified and it is recommended that NHRIs can contribute to sustainable development more meaningfully if they can make themselves more relevant, credible, legitimate, efficient and effective.

Conceptual Context

Understanding the role of NHRIs in sustainable development requires an understanding of the relationship between human rights and development. Whereas this aspect will be discussed further below, suffice to say here that understanding the relationship between human rights and development requires, first and foremost, an understanding of the meaning of the two concepts.

The United Nations (UN) has defined a NHRI as ‘a body that is established by a government under the Constitution, by law or by decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.’⁴ National human rights institutions can, therefore, broadly be defined as independent state bodies bestowed with a constitutional and/or legislative mandate of protecting, monitoring and promoting human rights in the countries where they are established. Some have argued that the UN definition is too broad and might include several bodies that do not qualify to be NHRIs.⁵ For purposes of this discussion that argument will not be pursued. Suffice to say that the Office of the United Nations High Commissioner for Human Rights (OHCHR) has described NHRIs as the bedrock of national human rights protection systems, which should ‘serve as relay mechanisms between international

³ John Mubangizi, ‘A Comparative Discussion of the South African and Ugandan Human Rights Commissions’ (2015) 48(1) CILSA 127.

⁴ OHCHR Centre for Human Rights Professional Training Series No. 4 National Human Rights Institutions, ‘A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights’ <<https://www.ohchr.org/Documents/Publications/training4en.pdf>> accessed 8 July 2019.

⁵ See, for example, Lilian Chenwi, ‘National Human Rights Institutions: A Comparative Study of the National Commissions on Human Rights of Cameroon and South Africa’ (LLM dissertation, University of Pretoria 2002).

human rights norms and the State.⁶ According to the OHCHR, NHRIs are unique and do not function like other spheres of government in that ‘they are not under the direct authority of the executive, legislature or judiciary.’⁷ They are, however, ‘as a rule, accountable to the legislature either directly or indirectly.’⁸ Although some NHRIs may not always meet this standard, most of them generally act as a bridge between civil society and government because ‘they link the responsibilities of the State to the rights of citizens.’⁹ NHRIs provide a neutral meeting point, a focal point for human rights by encouraging dialogue and facilitating cooperation.¹⁰

NHRIs enable states ‘to meet their international responsibility to take all appropriate action to ensure that international obligations are implemented at a national level.’¹¹ According to the *UN Human Rights Commission’s Fact Sheet No. 19 on National Institutions for the Promotion and Protection of Human Rights*,¹² NHRIs ‘have on-going advisory authority with respect to human rights at a national and/or international level.’¹³ Their purposes ‘are pursued in a general way through opinions and recommendations or through the consideration and resolution of complaints submitted by individuals or groups.’¹⁴ As mentioned earlier, the responsibilities of the NHRI have to be separated from those of the executive, the legislature and the judiciary in order to enable them to take a leading role in the area of human rights. Maintaining a healthy distance from the government of the day will give NHRIs the space and independence to make a unique and meaningful contribution to a country’s efforts to protect citizens from human rights violations and develop a culture that respects human rights and fundamental freedoms.

The concept of sustainable development has to be defined in the general context of the concept of development, which was defined by the 1986 United Nations Declaration on the Right to Development as:

a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals

⁶ OHCHR, ‘National Human Rights Institutions, History, Principles, Roles and Responsibilities’ <https://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf> accessed 8 July 2019.

⁷ *ibid.*

⁸ *ibid.*

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*

¹² OHCHR, ‘Fact Sheet No.19, National Institutions for the Promotion and Protection of Human Rights’ <<https://www.ohchr.org/Documents/Publications/FactSheet19en.pdf>> accessed 8 July 2019.

¹³ *ibid.*

¹⁴ *ibid.*

on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from.¹⁵

Whereas this definition embodies different types of development such as economic development, human development and sustainable development, today, development is increasingly understood in the sustainable context. Indeed sustainable development is a recent concept that appeared for the first time in the 1987 *Report of the World Commission on Environment and Development: Our Common Future*.¹⁶ The Report (also known as the Brundtland Report) defined sustainable development as ‘development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’¹⁷ In its description of the concept, the report stated that

[i]n essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development; and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.¹⁸

The report further stated that ‘the concept of sustainable development does imply limits – not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities.’¹⁹

In addition to the standard definition provided in the Brundtland Report, several alternative definitions of sustainable development have been suggested.²⁰ So, it is difficult to identify a clear, fixed and immutable definition. The term ‘sustainable development’ in fact, draws its power from its ambiguity. According to *Kates et al*, ‘its malleability allows it to remain open, dynamic and evolving so that it can be adapted to fit different situations and contexts across space and time.’²¹ Its openness to

¹⁵ UNGA Res 41/128 (4 December 1986) <<https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightToDevelopment.aspx>> accessed 10 July 2019.

¹⁶ UNGA, ‘Report of the World Commission on Environment and Development: Our Common Future’ (20 March 1987) <<https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>> accessed 12 July 2019.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ See Robert Kates, Thomas Parris, and Anthony Leiserowitz, ‘What is Sustainable Development? Goals, Indicators, Values, and Practice’ (2005) 47(3) *Environment: Science and Policy for Sustainable Development* 8–21.

²¹ *ibid.*

interpretation enables participants at multiple levels within different sectors to redefine and reinterpret its meaning to fit their situations.²²

It is against the foregoing contextual background that the role and impact of NHRIs on sustainable development has to be seen. But first a brief discussion on the relationship between human rights and development is required. It is to that discussion that we now turn our attention.

The Relationship between Human Rights and Development

The opening statement of the preamble to the *Human Development Report 2000* states that: ‘Human rights and human development share a common vision and a common purpose – to secure the freedom, well-being and dignity of all people everywhere.’²³ The report goes on to elaborate on how ‘human development and human rights are close enough in motivation and concern to be compatible and congruous, and [how] they are different enough in strategy and design to supplement each other fruitfully.’²⁴ This compatibility and congruity is reflected further, albeit indirectly, in the 1948 Universal Declaration of Human Rights²⁵ whose preamble states that ‘the peoples of the United Nations have ... reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom.’²⁶

The relationship between human rights and development is also reflected in the fact that they both aim to achieve the same thing—improving peoples’ lives. In other words, development and human rights essentially focus on the development of the human person. Moreover, human rights and development are mutually reinforcing. The protection of human rights contributes to development by guaranteeing protected spaces within which development processes, policies and programmes can be effectively implemented. Development contributes to human rights protection by guaranteeing availability of facilities, resources and services that ensure the enjoyment of both socio-economic and civil and political rights. That is why poverty is seen by some as a violation of human rights. This is because it is characterised, among other things, by inadequate housing, poor health, illiteracy and discrimination, which in turn ‘prevent educational achievement and work opportunities, leading to exclusion from political

²² *ibid.*

²³ UNDP, *Human Development Report 2000*
http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf accessed 18 July 2019.

²⁴ *ibid.*

²⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

²⁶ See Preamble to the Universal Declaration of Human Rights,
https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf accessed 18 July 2019.

and social participation in society.’²⁷ For that reason, it is submitted that development thrives within a human rights framework and should be seen as an integral part of human rights.

The relationship between human rights and development was acknowledged by the UN in the Declaration on the Right to Development²⁸ whose preamble expresses concern ‘at the existence of serious obstacles to development ... constituted, *inter alia*, by the denial of civil, political, economic, social and cultural rights.’²⁹ Emphasising the indivisibility and interdependence of human rights, the preamble goes on to say that ‘in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.’³⁰ States are then urged to ‘undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.’³¹

Prior to the adoption of the UN Declaration on the Right to Development, and in the particular context of Africa, it is important to note that the African Charter on Human and People’s Rights³² had already incorporated the right to development. Article 22 of the Charter states that:

- 1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
- 2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

This seems to imply that first; development is a human right; second, that such development is the basis for the realisation of all human rights; and third, that the full attainment of human rights requires the support of economic, social and cultural development.³³ This is why the realisation of economic, social and cultural rights is

²⁷ See Gillian MacNaughton and Diane Frey, ‘Decent Work, Human Rights, and the Millennium Development Goals’ (2010) 7(2), *Hastings Race and Poverty LJ* 303–352.

²⁸ UNGA Res 41/128 (4 December 1986). (n 15)

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.* Art. 8(1).

³² African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (African Charter), also known as the Banjul Charter.

³³ See John Mubangizi, ‘A Human Rights-based Approach to Development in Africa: Opportunities and Challenges’ (2014) 39(1) *Journal of Social Sciences* 67–76.

crucial for economic development. Conversely, underdevelopment negatively affects the enjoyment and realisation of economic, social and cultural rights.

The *2030 Agenda for Sustainable Development*³⁴ also recognises the important relationship between human rights and development. It states that ‘the Agenda is grounded in the Universal Declaration of Human Rights, and international human rights treaties, among other things and is informed by other instruments such as the Declaration on the Right to Development.’³⁵ In paragraph 20, the Agenda alludes to the relationship between human rights protection and sustainable development by stating that ‘the achievement of full human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities.’³⁶

In the particular context of socio-economic rights, it is important to note that several SDGs focus on important economic and social rights areas such as poverty (Goal 1), food and nutrition (Goal 2), health (Goal 3), education (Goal 4), and water and sanitation (Goal 6). It is also important to note that the UN Committee on Economic, Social and Cultural Rights has recognised this important relationship by declaring that economic, social and cultural rights are a fundamental pillar of the 2030 Agenda.³⁷ In the 2019 Statement by the Committee,³⁸ it is categorically acknowledged that

the International Covenant on Economic, Social and Cultural Rights, as a core United Nations human rights treaty, is thus a fundamental pillar of the 2030 Agenda. It enshrines the protection of the economic, social and cultural rights of all, particularly disadvantaged and marginalized individuals and groups, [and]... the rights protected under the Covenant underpin the Sustainable Development Goals.³⁹

The purpose of this article does not lend itself to a more detailed discussion of the relationship between human rights and development, suffice to say that it is against the

³⁴ UNGA Res 70/1 (25 September 2015) UN Doc A/RES/70/1, ‘Transforming our World: The 2030 Agenda for Sustainable Development’ <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 19 July 2019.

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ See UN Committee on Economic, Social and Cultural Rights, ‘The Pledge to Leave No One Behind: The International Covenant on Economic, Social and Cultural Rights and the 2030 Agenda for Sustainable Development’ Statement by the Committee on Economic, Social and Cultural Rights (5 April 2019) UN Doc E/C.12/2019/1 <https://sustainabledevelopment.un.org/content/documents/21780E_C.12_2019_1_edited.pdf> accessed 25 May 2020.

³⁸ *ibid.*

³⁹ *ibid.*

foregoing discussion that the role of NHRIs in realising the 2030 Agenda for Sustainable Development must be seen, an aspect to which we now turn our attention.

NHRIs and the Realisation of the 2030 Agenda for Sustainable Development

Throughout its text, the 2030 Agenda for Sustainable Development makes several references to human rights and how the SDGs ‘seek to realise the human rights of all.’⁴⁰ According to the Global Alliance of National Human Rights Institutions (GANHRI), ‘given their unique mandate and role, National Human Rights Institutions (NHRIs) can play a key role in the implementation and follow-up of the Agenda.’ This role is, in fact, already being played by the NHRIs through their existing core functions which include, for example, the ‘on-going NHRI monitoring of human rights [which] is immediately relevant for specific goals and targets, such as Goal 16 on peace, justice and sustainable institutions; target 4.7 on human rights education, and; targets 5.c, 10.3 and 16.b on elimination of discriminatory legislation.’⁴¹

The important role of NHRIs in the realisation of the 2030 Agenda was acknowledged and specified in *The Mérida Declaration on the Role of NHRIs in Implementing the 2030 Agenda for Sustainable Development*⁴² which was adopted a few weeks after the adoption of the 2030 Agenda. The *Mérida Declaration* outlines how NHRIs can apply their unique mandate and functions to support the implementation of the 2030 Agenda and the relation of human rights.⁴³ These include advising national and local governments; raising awareness and promoting dialogue and participation; developing and sustaining partnerships; assisting in shaping national indicators; monitoring and reporting on progress; holding governments accountable; investigating rights violations and providing access to justice, among other things.⁴⁴

Mention was made earlier of the 2030 Agenda’s recognition of the important relationship between human rights and development. Given that relationship, and the Agenda’s integration of ‘crosscutting human rights principles such as participation, accountability and non-discrimination’, NHRIs can ‘play a key role in translating the SDGs into reality.’⁴⁵ Due to their status as independent state institutions, NHRIs have

⁴⁰ See the Preamble, paras 3, 8, 19, 20, 29, 35, and 74.

⁴¹ See Nadja Filskov, ‘National Human Rights Institutions Engaging with the Sustainable Development Goals (SDGs)’ A Report of the Global Alliance of National Human Rights Institutions (GANHRI), June 2017.

⁴² Adopted at the 12th International Conference of the International Co-ordinating Committee of International Institutions for the Promotion a Protection of Human Rights.

⁴³ Mérida Declaration on the Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development, <<https://nhri.ohchr.org/EN/ICC/InternationalConference/12IC/Background%20Information/Merida%20Declaration%20FINAL.pdf>> accessed 20 July 2019.

⁴⁴ Paragraph 17.

⁴⁵ GANHRI Report (n 41).

the ability to perform a wide range of functions that contribute to the realisation of the Agenda. According to GANHRI, these functions include but are not limited to ‘monitoring and reporting, advising the government on human rights issues, cooperating with national, regional and international bodies, complaints handling and promoting human rights education.’⁴⁶

Analysing the SDGs, Jensen, Corkery and Donald show how the 2030 Agenda is relevant for human rights and, by extension, for NHRIs.⁴⁷ Such relevance is reflected, first, through goals relating to economic, social and cultural rights mentioned earlier. It is also reflected through goals relating to civil and political rights such as Goal 16 on accountable and inclusive institutions and access to justice for all. It is important to note that the existence of independent NHRIs was one of the indicators proposed to underpin Goal 16—a clear recognition of the role of NHRIs.⁴⁸ The relevance of the 2030 Agenda for human rights and for NHRIs is further reflected in goals emphasising the principles of equality, non-discrimination and access for all such as Goal 5 (gender equality) and Goal 10, focusing on income inequality and social, economic and political exclusion. It has been argued that Goal 5 emphasising the principle of equality, non-discrimination and access to justice for all ‘opens an important avenue of engagement by NHRIs, who bring distinctive expertise and experience on these issues – especially those NHRIs who have an explicit anti-discrimination mandate.’⁴⁹

The role of NHRIs in the realisation of the 2030 Agenda also ought to be seen in the context of the broad range of responsibilities of NHRIs. These responsibilities which are contained in the Paris Principles⁵⁰ can generally be categorised as ‘research and advice, education and promotion, monitoring, investigating, conciliating and providing remedies, co-operating with other national and international organisations and interacting with the judiciary.’⁵¹ NHRIs can leverage any or of these functions in monitoring the implementation of SDGs thereby contributing to the realisation of the 2030 Agenda.

⁴⁶ *ibid.*

⁴⁷ See Steven Jensen, Allison Corkery and Kate Donald, ‘Realizing Rights through the Sustainable Development Goals: The Role of National Human Rights Institutions’ *Briefing Paper for the Centre for Economic and Social Rights, The Danish Institute for Human Rights* <https://www.humanrights.dk/files/media/dokumenter/udgivelser/research/nhri_briefingpaper_may2015.pdf> accessed 20 July 2019.

⁴⁸ Goal 16.a.1. See also UN Statistical Commission, ‘Report of the Inter-Agency and Expert Group on Sustainable Development Goal Indicators’ 47th session (March 2016) (E/CN.3/2016/2/Rev.1) Annex IV <<https://sustainabledevelopment.un.org/content/documents/11803Official-List-of-Proposed-SDG-Indicators.pdf>> accessed 20 July 2019.

⁴⁹ Jensen and others (n 47).

⁵⁰ UNGA, The Paris Principles Related to the Status of National Institutions for the Promotion and Protection of Human Rights (adopted on 20 December 1993) GA Res 48/134.

⁵¹ Jensen and others (n 47).

The foregoing discussion provides a contextual background against which the role of NHRIs in specific African countries in promoting and protecting human rights and the implications for sustainable development have to be understood - an aspect that now follows.

NHRIs and Sustainable Development: Specific African Countries

South Africa

Chapter 9 of the South African Constitution establishes several ‘state institutions [to] strengthen constitutional democracy in the Republic.’⁵² These include the Public Protector; the South African Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; the Commission for Gender Equality; the Auditor-General; and the Electoral Commission. Although some of these institutions play some role or other in the promotion and protection of human rights, only the South African Human Rights Commission can truly be described as an NHRI.

The functions of the South African Human Rights Commission (SAHRC) are laid down in section 184 of the Constitution. They include an obligation to:

- (a) promote respect for human rights and a culture of human rights;
- (b) promote the protection, development and attainment of human rights; and
- (c) monitor and assess the observance of human rights in the Republic.

Section 184(2) gives the SAHRC the necessary powers ‘as regulated by legislation ... to perform its functions, including the power to investigate and report on the observance of human rights, to take steps to secure appropriate redress where human rights have been violated, to carry out research and to educate.’⁵³ In pursuance of section 184(4) of the Constitution the South African Human Rights Commission Act⁵⁴ was enacted to provide for various matters relating to the SAHRC including its composition, powers, functions and functioning.

The SAHRC has generally been successful and effective in its mandate. Its achievements have included successfully investigating complaints and monitoring serious cases of human rights violations; ‘reporting to Parliament on the state’s progress in the realisation of socio-economic rights’⁵⁵ and conducting workshops, training

⁵² Section 181(1).

⁵³ Section 184(2).

⁵⁴ Act 40 of 2013.

⁵⁵ SAHRC, ‘About SAHRC’ <www.sahrc.org.za> accessed 21 July 2019.

programmes, outreach campaigns, seminars, information sessions and presentations. They also include ‘monitoring the media to track human rights issues; and participating and contributing to human rights discourse at the regional, national and international level.’⁵⁶

Mention was made earlier of the general role of NHRIs in the realisation of the SDGs. The SAHRC is not different from other NHRIs in playing this role. Judging from its powers, functions and achievements the SAHRC has done this through ‘research and advice; education and promotion of human rights; monitoring the state’s implementation of international and national obligations; investigating alleged human rights violations; conciliating and providing remedies into human rights related violations; cooperating with other national and international organisations; and interacting with the judiciary.’⁵⁷

One specific and unique way through which the SAHRC contributes to the realisation of SDGs is through a special mandate granted to it under section 184(3) of the Constitution. In terms of that mandate, the Commission is obliged to ‘require relevant organs of state to provide [it] with information on the measures that they have taken towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment.’⁵⁸ The Commission has used this mandate to prioritise the realisation of socio-economic rights, all of which are contained in the SDGs. These include good health (Goal 3), education (Goal 4), food (Goal 2), and water (Goal 6). The SAHRC has also used this mandate in addressing poverty (Goal 1). The Commission has generally used this mandate quite well through regular Economic and Social Rights Reports (also known as Section 184(3) Reports).⁵⁹ Not only do the reports contain findings on the status of the realisation of each of the socio-economic rights, they also contain specific recommendations on what needs to be done to improve the status quo.

The foregoing discussion clearly shows the Commission’s direct and straightforward role in contributing to the realisation of Agenda 2030. It is not only through Economic and Social Rights Reports, however, that the Commission plays a role. It also does so through other reports that fall outside the social and economic rights realm. For example a recent SAHRC Equality Report (2017/18) evaluated the government’s programme of

⁵⁶ *ibid.*

⁵⁷ See Mohamed Ameerma, ‘Climate Change and Sustainable Development Goals: Perspectives of the South African Human Rights Commission’ Presentation at a special event in Marrakech, Morocco (6 November 2016) <<https://slideplayer.com/slide/12070510/>> accessed 21 July 2019.

⁵⁸ Section 184(3).

⁵⁹ An example of such reports is available at <<http://www.sahrc.org.za/home/21/files/Final%20S184%283%29%20Report%202012-2013.pdf>> accessed 25 July 2019.

radical socio-economic transformation from a rights-based perspective.⁶⁰ The report states that ‘poverty and economic inequality manifest in patterns that severely prejudice vulnerable individuals and groups based on their race, geographic location, and gender and disability status.’⁶¹ It further states that ‘the government’s programme of radical socio-economic transformation is necessary, and should focus on addressing the extreme concentration of income and wealth in the top deciles of society.’⁶² The report concludes, among other things, that ‘there is extreme institutional fragmentation and incoherence across all rights-based focused areas that hold the potential to promote radical economic transformation’ and that ‘there is accordingly an urgent need to coordinate need-based special measures across various government departments, specialised bodies and organs of state generally.’⁶³ Through such reporting, the SAHRC clearly plays an important role in the realisation of Agenda 2030.

An important South African institution that cannot technically be described as a NHRI but in a way, supplements the role of the SAHRC is the Public Protector. The powers and functions of the Public Protector are laid out in section 182 of the 1996 Constitution as follows:

- a) To investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;
- b) to report on that conduct; and
- c) to take appropriate remedial action.

Clearly, the role of the Public Protector in the protection of human rights is rather indirect because, as can be seen from the above powers and functions, the Public Protector’s mandate is primarily about good governance and investigating maladministration and allegations of corruption. I have argued elsewhere though that ‘in performing these functions, human rights abuses resulting from state misconduct and public maladministration are curbed.’⁶⁴ More importantly, however, the role and impact of good governance in sustainable development has been widely acknowledged and recognised. Goal 16 of the SDGs states that ‘effective governance institutions and

⁶⁰ See SAHRC ‘Equality Report 2017/18’ <https://www.sahrc.org.za/home/21/files/SAHRC%20Equality%20Report%202017_18.pdf> accessed 26 July 2019.

⁶¹ *ibid.*

⁶² *ibid.*

⁶³ *ibid.*

⁶⁴ See John Mubangizi, ‘Building a South African Human Rights Culture in the Face of Cultural Diversity: Context and Conflict’ 2012 (5) *African J of Legal Studies* 10.

systems that are responsive to public needs deliver essential services and promote inclusive growth.’ According to Iyad Dhaoui:

Good governance is widely acknowledged as a foundation for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger.⁶⁵

There are also those who have argued that good governance can be an instrument which helps in overcoming poverty.⁶⁶ Moreover, according to the UNDP: ‘good governance promotes freedom from violence, fear and crime, and peaceful and secure societies that provide the stability needed for development investments to be sustained... Hence, governance enables the achievement of a range of critical development objectives.’⁶⁷

In so far as corruption is concerned, a lot has been written on its adverse impact on sustainable development. Goal 16 of the SDGs directly speaks to the issue of corruption. It requires states to ‘promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’ One of the targets of that goal is to ‘substantially reduce corruption and bribery in all their forms.’ It can clearly be seen, therefore, that by executing its mandate of good governance and investigating maladministration and allegations of corruption, the Public Protector contributes to sustainable development and plays an important role in the realisation of Agenda 2030.

Comparatively speaking, there are lessons that other African countries can learn from South Africa. For example, the SAHRC’s special mandate of monitoring measures taken by organs of state in the realisation of socio-economic rights is a unique and significant way of contributing to sustainable development. As mentioned earlier, the Commission has used this mandate to prioritise the realisation of socio-economic rights, all of which are contained in the SDGs. The South African approach, therefore, provides a lesson that other countries can benefit from.

⁶⁵ See Iyad Dhaoui, ‘Good Governance for Sustainable Development’ Munich Personal RePEc Archive (January 2019) <https://mpra.ub.uni-muenchen.de/92544/1/MPRA_paper_92544.pdf> accessed 25 July 2019.

⁶⁶ See Ilija Stojanović, Jovo Ateljević and Stevan Stević, ‘Good Governance as a Tool of Sustainable Development’ (2016) 5(4) *European J of Sustainable Development* 562.

⁶⁷ UNDP, ‘Discussion Paper: Governance for Sustainable Development, Integrating Governance in the Post-2015 Development Framework’ (March 2014) <<https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Discussion-Paper--Governance-for-Sustainable-Development.pdf>> accessed 26 July 2019.

Namibia

Chapter 10 of the Constitution of Namibia establishes the Namibian Office of the Ombudsman. The Ombudsman Act⁶⁸ spells out the key mandate areas of the Ombudsman by defining and describing its powers, duties and functions. Such powers include the promotion and protection of human rights in the country. As such, in addition to the traditional functions of an Ombudsman, the Namibian Ombudsman has a unique mandate of a Human Rights Commission.

The functions of the Namibian Ombudsman are laid out in article 91 of the Namibian Constitution. They include:

[T]he duty to investigate complaints concerning alleged or apparent instances of violations of fundamental rights and freedoms; complaints concerning the functioning of the Public Service Commission, administrative organs of the State, the defence force, the police force and the prison service; complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources the degradation and destruction of ecosystems; [and] complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place.⁶⁹

They also include ‘the duty to investigate vigorously all instances of alleged or suspected corruption and the misappropriation of public monies by officials and to take appropriate steps [and] the duty to report annually to the National Assembly on the exercise of his or her powers and functions.’⁷⁰ Essentially, therefore, matters which can be investigated by the Namibian Ombudsman fall into the categories of human rights violations, maladministration, environmental degradation, and corruption and misappropriation of public monies and property.

The human rights mandate of the Namibian Ombudsman is an important one. It is this mandate that gives the Ombudsman its distinctive hybrid character, and the right to qualify as a national human rights institution. Through its execution of this mandate the Ombudsman contributes to sustainable development much in the same way as was seen earlier with the SAHRC. The main difference, though, is that ‘the rights enumerated in the [Namibian Bill of Rights] are confined to the so-called first-generation or traditional human rights. The second and third generation rights do not feature in the Constitution,

⁶⁸ 7 of 1990.

⁶⁹ Articles 91(a) to 91(d).

⁷⁰ Articles 91(f) and 91(g).

but only as principles of state policy (in chapter 11) and not as judicially enforceable rights.⁷¹

In so far as its mandate to investigate maladministration is concerned, the Namibian Ombudsman plays an important role in the realisation of Agenda 2030 through its contribution to the promotion of good governance. As was mentioned earlier, good governance is generally seen as a foundation for sustainable development and Goal 16 specifically talks to that. Similarly, through its mandate to investigate corruption and misappropriation of public funds, the Namibian Ombudsman contributes to sustainable development much in the same way as the South African Public Protector does. Goal 16, as was mentioned earlier, is relevant and pertinent here.

It is perhaps through its environmental protection mandate that the Namibian Ombudsman contributes most to sustainable development. This unique mandate has been hailed as innovative and progressive.⁷² Indeed, since its inception, the Namibian Office of the Ombudsman has investigated several complaints concerning environmental issues, though such complaints have been relatively few compared to complaints of human rights violations and maladministration. Nevertheless, by executing its environmental protection mandate, the Namibian Ombudsman contributes directly to the realisation of Goal 15 and indirectly to Goals 8, 9, 11 and 12.

The Namibian approach certainly provides comparative lessons for other African countries in this study. Mention was made above of the distinctive hybrid nature of the Namibian Ombudsman as it performs the traditional functions of an ombudsman but also carries the mandate of a human rights commission. Whether this makes it a more effective NHRI is quite debatable. Suffice it to say, however, that this arrangement, which is similar to that of Ghana, seems to work well as it gives the Namibian Ombudsman wider powers, which if exercised properly, have the potential of contributing meaningfully to sustainable development. For example, among the NHRIs in the countries discussed, the Namibian Ombudsman is the only NHRI that has an environmental protection mandate. This is a unique and innovative mandate, which the Namibian Ombudsman has used to investigate several complaints concerning environmental issues, thereby contributing to sustainable development generally and to the realisation of several SDGs specifically. This is an approach that other African countries can learn from.

⁷¹ See Gretchen Carpenter, 'The Namibian Constitution – *ex Afria Aliquid Novi* After All?' in Dawid van Wyk, Marinus Wiechers and Romaine Hill (eds), *Namibia: Constitutional and International Law Issues* (VerLoren van Themaat Centre for Public Law Studies, 1991) 32.

⁷² See John Mubangizi, 'The South African Public Protector, the Ugandan Inspector-General of Government and the Namibian Ombudsman: A Comparative Review of their Roles in Good Governance and Human Rights Protection' (2012) 45(3) CILSA 321.

Uganda

Established under articles 51 to 59 of the 1995 Constitution of the Republic of Uganda and later provided for in more detail by the Uganda Human Rights Commission Act,⁷³ the Uganda Human Rights Commission (UHRC) is the main NHRI in the country. Its functions include, inter alia, ‘investigating human rights violations; visiting jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations; and establishing a continuing programme of research, education and information to enhance respect of human rights.’⁷⁴ They also include recommending to Parliament effective measures to promote human rights; creating and sustaining the awareness of the provisions of the Constitution; educating and encouraging the public to defend this Constitution at all times; and monitoring government’s compliance with international treaty and convention obligations on human rights.⁷⁵

Article 53 spells out the Commission’s powers, the most significant aspect being that the Commission has judicial powers. It is empowered to make legally binding decisions that can be enforced much in the same way as those of a court of law. Although the Commission has occasionally exercised these judicial powers in dealing with claims of human rights violations, ‘it appears that it has not overemphasized such powers to the significant detriment of its promotional and educational function.’⁷⁶

Under Article 52 (2) the Commission is required ‘to publish periodic reports and submit annual reports to Parliament on the state of human rights and freedoms in the country.’ The most recent Annual Report, published in 2017, focuses on how the UHRC has used its constitutional powers and functions to effectively monitor the progress made by the state with respect to the realisation and protection of human rights. It also highlights the successes and challenges the UHRC encountered during the year. These include:

- conducting a mapping of sixty districts that were affected by the 2017 famine.
- conducting routine inspections of places of detention and interacting with pre-trial detainees who expressed several concerns.
- monitoring and documenting the occurrence of violent crimes and their impact on the enjoyment of the right to security of a person.

⁷³ 4 of 1997

⁷⁴ See Art 52(1) of the Ugandan Constitution.

⁷⁵ *ibid.* See also John Mubangizi, ‘The Protection of Human Rights in Uganda: Public Awareness and Perceptions’ (2005) 3(1) *African J of Legal Studies* 175.

⁷⁶ Obiora Okafor, ‘National Human Rights Institutions in Anglophone Africa’ in Ryan Goodman and Thomas Pegram (eds), *Human Rights, State Compliance and Social Change: Assessing National Human Rights Institutions* (Cambridge University Press 2012) 131.

- checking on the status of bills before Parliament.
- making a number of recommendations to state departments and ministers aimed at improving the human rights situation in the country, and
- continuing to carry human rights and civic education interventions.

In so far as contributing to sustainable development is concerned, it must be noted that the UHRC mission statement is '[t]o protect and promote fundamental human rights and freedoms in Uganda for sustainable development'⁷⁷ and its tag-line is 'Human rights: the key to development.'⁷⁸ Accordingly, the UHRC has contributed to sustainable development through the achievements mentioned above and several other activities and practices. Such practices have been acknowledged nationally and internationally. For example, a 2016 UNDP study noted that:

Since 2001, the UHRC has been pro-active in mainstreaming a human rights-based approach within the government's planning process, particularly in terms of poverty eradication. The UHRC's participation resulted in the inclusion of human rights issues in the formulation of the Poverty Eradication Action Plan (PEAP). The UHRC's guidance and advisory services to the Uganda National Planning Authority has also been instrumental in mainstreaming PEAP as well as a human rights-based approach in the National Development Plan.⁷⁹

This clearly shows the UHRC's contribution to the realisation of Goal 1, which aims to end poverty in all its forms everywhere. Moreover, the same UNDP study noted the UHRC's influence on government 'regarding addressing internal conflict in the country due to the displacement of the Karamojong (pastoralists), who illegally possess large quantities of firearms.'⁸⁰ The UHRC adopted several measures and initiatives that led to an improvement in the overall human rights and security situations in the region.⁸¹ In this way, the UHRC contributed to the realisation of Goal 16 which aims to 'promote peaceful and inclusive societies for sustainable development', among other things. These are just two specific examples of the UHRC's contribution to sustainable development. The UHRC also obviously contributes to sustainable development much in the same way as was seen earlier with the SAHRC and the Namibian Ombudsman through the execution of its human rights protection mandate.

As with the SAHRC and the Public Protector, the role and functions of the UHRC are complemented by those of the Inspector-General of Government (IGG). Established

⁷⁷ See 'Uganda Human Rights Commission' <<http://uhrc.ug/uhrc-mandate>> accessed 1 August 2019.

⁷⁸ *ibid.*

⁷⁹ UNDP, *Study on the State of National Human Rights Institutions (NHRIs) in Africa* (2016) <[https://nhri.ohchr.org/EN/ExternalPublications/State%20of%20Africa%20NHRIs%20Study%20Report%20\(English\).pdf](https://nhri.ohchr.org/EN/ExternalPublications/State%20of%20Africa%20NHRIs%20Study%20Report%20(English).pdf)> accessed 1 August 2019.

⁸⁰ *ibid.*

⁸¹ *ibid.*

under Article 223 of the Ugandan Constitution, the IGG's functions are spelt out under Article 225 to include, inter alia, 'the promotion and fostering of strict adherence to the rule of law, the elimination of corruption and abuse of authority, the promotion of good governance and the stimulation of public awareness about the values of constitutionalism.'⁸² The IGG contributes to sustainable development much in the same way as was seen with the South African Public Protector and the Namibian Ombudsman, through its mandate of promoting good governance and eliminating corruption. In so doing, the realisation of Goal 16 specifically, is enhanced.

Comparatively speaking, the UHRC's mandate also provides an important lesson for other countries. As mentioned earlier, the UHRC has powers of a court, which include:

- issuing summons or other orders requiring the attendance of any person or production of any documents.
- questioning any person in respect of any matter under investigation.
- requiring any person to disclose any information relevant to any investigation by the Commission, and
- committing persons for contempt of its orders.⁸³

Because of these judicial powers, the UHRC is seen as the most court-like of all the NHRIs discussed in this article. The Commission has exercised these far-reaching judicial powers occasionally in dealing with claims of human rights violations.⁸⁴ Although some of the decisions of the Commission have frequently been met with resistance and lack of implementation by the state, the existence of such a mandate presents a lesson for NHRIs in other African countries, particularly in view of the potential such mandate provides for contributing to sustainable development.

Kenya

The main NHRI in Kenya is the Kenya National Commission on Human Rights (KNCHR). Established in terms of Article 59 of the Constitution, its functions are spelt out in Article 59(2) to include, inter alia, 'promoting respect for human rights and developing a culture of human rights; promoting the protection and observance of human rights and monitoring, investigating and reporting on their observance; and receiving and investigating complaints of alleged human rights violations.'⁸⁵ They also include 'acting as the principal state organ in ensuring compliance with obligations set out in international treaties and conventions relating to human rights; formulating,

⁸² Article 225(1).

⁸³ Article 53(1) of the Ugandan Constitution.

⁸⁴ UNDP, *Study on the State of National Human Rights Institutions* (n 79).

⁸⁵ Article 59(2).

implementing and overseeing programmes intended to raise public awareness of the rights; and reporting on complaints received and taking remedial action.⁸⁶

The KNHRC carries out these functions ‘through various strategies including research, advocacy, lobbying, education and training, outreach, investigations, networking, building partnerships and issuing advisories and publications such as regular annual reports.’⁸⁷ The 2017/2018 Annual Report—which is the most recent—lists four strategic objectives of the Commission. These include ‘promoting the respect and observance of human rights standards by public and private actors; increasing the application of human rights principles and standards in institutions and alternative justice mechanisms; enhancing the realization of economic, social and cultural rights in Kenya; and enhancing the efficiency and effectiveness of the Commission.’⁸⁸

Of these strategic objectives, the most relevant to sustainable development is the enhancement of the realisation of economic, social and cultural rights. Indeed, during the 2016/2017 reporting year, out of 4852 petitions received by the Commission, 63.7 per cent consisted of complaints relating to economic, social and cultural rights.⁸⁹ During the same period, the Commission released a number of thematic reports on socio-economic rights including reports on the right of access to free primary education and the right to health.⁹⁰ Moreover, the Commission also ran a compliance audit on certain socio-economic areas such as the adherence to eviction laws by the state and the development of a framework for operationalising rights to health and water.⁹¹

The Kenyan experience with regard to promoting economic, social and cultural rights was highlighted by the 2016 UNDP study mentioned earlier.⁹² The study identified the good practices of the KNHRC in the implementation of a human rights-based approach to plan, implement, monitor and evaluate its work. The best practices identified included the linking of the monitoring of socio-economic and cultural rights through a rights-based approach, the involvement of all stakeholders, building internal capacity, monitoring the government’s obligation to fulfil socio-economic and cultural rights, and training of the KNCHR’s staff on the human rights-based approach.⁹³ This initiative of promoting socio-economic and cultural rights underscores the KNHRC’s contribution

⁸⁶ *ibid.*

⁸⁷ See Kenya National Commission on Human Rights <<https://www.knchr.org>> accessed 30 January 2020.

⁸⁸ See KNHRC, ‘Annual Report 2017/2018’ <<https://www.knchr.org/Portals/0/AnnualReports/Annual%20Report%202017-2018.pdf?ver=2019-10-16-080029-663>> accessed 30 January 2020.

⁸⁹ KNHRC, ‘Annual Report 2016/2017’ <<https://www.knchr.org/Portals/0/2016-2017.pdf>> accessed 30 January 2020

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² UNDP, *Study on the State of National Human Rights Institutions* (n 79).

⁹³ *ibid.*

to sustainable development as it speaks to several SDGs, which include ensuring good health (Goal 3), inclusive and equitable education (Goal 4), ending hunger and achieving food security (Goal 2) and ensuring availability of water and sanitation for all (Goal 6).

The functions of the KNHRC are supplemented by the Commission on Administrative Justice (CAJ) also known as the Office of the Ombudsman, whose role is not different from that of its South African and Ugandan counterparts as it carries a similar mandate. That mandate obliges the CAJ ‘to investigate any conduct in state affairs or any act or omission in public administration in any sphere of Government and complaints of abuse of power, unfair treatment, manifest injustice or unlawful, oppressive, unfair or unresponsive official conduct.’⁹⁴ As with the South African Public Protector and the Ugandan Inspector-General of Government (IGG), the Kenyan CAJ contributes to sustainable development through its mandate of building good governance by investigating poor administration and allegations of corruption.

There are lessons to learn from the KNCHR particularly its prioritisation of the enhancement of the realisation of economic, social and cultural rights. It ought to be mentioned that it does so without a specific constitutional mandate similar to that of the SAHRC. Nevertheless, as was mentioned earlier, the KNCHR’s experience of promoting economic, social and cultural rights was highlighted by the 2016 UNDP Study,⁹⁵ particularly the implementation of a human rights-based approach in so doing. Such an approach has significant implications for sustainable development and the realisation of several SDGs. NHRIs in other African countries can learn from the Kenyan experience and approach.

Conclusion

The foregoing discussion shows that there are many similarities between the countries considered in so far as their NHRIs are concerned and the role they play in sustainable development. It is also clear, though, that there are several differences between them, some of which could provide comparative lessons and areas of best practice.

The role of NHRIs and their contribution to sustainable development cannot be overemphasised. The article has highlighted this role with specific reference to the 2030 Agenda for Sustainable Development and the SDGs contained therein. It is also clear that NHRIs in some African countries are better placed to play this role than their counterparts in other countries. This is mainly because of the differences between these NHRIs. Such differences manifest themselves in the nature or character of the human rights institutions, their mandates, the powers they enjoy and the functional areas they

⁹⁴ Article 59 of the Kenyan Constitution.

⁹⁵ UNDP, *Study on the State of National Human Rights Institutions* (n 79).

choose to prioritise. It is therefore, recommended that NHRIs learn from each other in terms of best practice and shared approaches. It is also recommended that NHRIs can contribute to sustainable development more meaningfully by striving to be relevant, credible, legitimate, efficient and effective. They can achieve these ideals by ensuring that their work is guided, largely, by the Paris Principles.

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