

THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN UGANDA AND SOUTH AFRICA: A COMPARATIVE EVALUATION

John C Mubangizi
LLB LLM LLD
Professor and Deputy Dean
Faculty of Law
University of KwaZulu-Natal, Durban

SUMMARY

The United Nations has, through several resolutions, acknowledged and recognized the important role national human rights institutions can and do play in the promotion and protection of human rights. Notable among those resolutions is Resolution 48/134 of 20 December 1993, which lays down a number of principles relating to the status of such institutions. This recognition has been reaffirmed by the Office of the United Nations High Commissioner for Human Rights through Resolution 2003/76 of 25 April 2003.

The last two decades have seen unprecedented political and constitutional changes in Africa as several African states have enacted new constitutions in an attempt to transform themselves into democratic societies. In the context of human rights protection, one of the main outstanding features of these new constitutions is that most of them contain bills of rights and the other is that they establish national institutions for the promotion and protection of human rights. Both the Ugandan constitution and the South African constitution fall into that category. It is against that background that this article seeks to evaluate, in a comparative way, the role that the national human rights institutions in the two countries can and do play in the promotion and protection of human rights. This role will be assessed in the context of the powers, functions, achievements and effectiveness of these institutions; the challenges they face and how they deal with them.

In Uganda, the relevant institutions include the Uganda Human Rights Commission and the Inspectorate of Government, while in South Africa they include some of the so-called Chapter 9 institutions, namely, the Public Protector; the Human Rights Commission; the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; and the Commission for Gender Equality. There are other institutions in both countries that play less direct and significant roles in human rights protection. This article undertakes a comparative survey of the main human rights institutions with a view to determining the extent of the role they play in promoting and protecting human rights, how this role can be enhanced and how the two countries can learn from each other.

1 INTRODUCTION

As a starting point, it is important to acknowledge and remember that the international community recognizes and encourages the role of national human rights institutions in the promotion and protection of human rights. In that regard the 1993 Vienna Declaration and Programme of Action, adopted at the conclusion of the Vienna World Conference on Human Rights, states as follows:

“The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.”¹

The Vienna Declaration also encourages the establishment and strengthening of national institutions and recommends that in so doing regard should be had to the Paris Principles.² These principles were initially adopted in 1992 by the UN Commission on Human Rights as “Principles Relating to the Status of National Institutions”. In 1993, they were adopted by the UN General Assembly through resolution 48/134. They have since been reaffirmed by the Office of the United Nations High Commissioner for Human Rights through Resolution 2003/76 of 25 April 2003. The Paris Principles are categorized into four groups, namely, those dealing with competence and responsibilities; composition and guarantees of independence and pluralism; methods of operation; and those concerning the status of commissions with quasi-judicial competence.

Many would argue that by African standards, and to some extent internationally, South Africa is a fledging multiparty democracy that respects the rule of law whereas Uganda is a benevolent dictatorship with little regard for the rule of law and democratic governance. One would therefore question the rationale of comparing the role of human rights institutions in two countries with such divergent democratic systems. The answer to these arguments is that it is precisely for that divergence that a comparison is necessary. The aim of this paper therefore is to investigate and understand the differences and similarities between human rights institutions in a democratic developing state and a non-democratic one.

There are other obvious reasons why South Africa and Uganda make good comparators. Firstly, in many respects both countries are transitional societies. Such societies usually have a history of autocratic dictatorships, apartheid and periods of conflict or foreign domination.³ Apartheid, racism and discrimination were defining features of South African history while colonialism and autocratic dictatorships characterized the history of Uganda.

¹ Par 36 Vienna Declaration and Programme of Action <http://www.ohchr.org/english/law/vienna.htm> (accessed 16 June 2006).

² *Ibid.*

³ See Mubangizi *The Protection of Human Rights in South Africa: A Legal and Practical Guide* (2004) 1.

Both countries therefore have a disturbing history of oppression and repression.

Secondly, since the early 1990's both South Africa and Uganda have been attempting to reform and transform their societies, by among other things, trying to improve the protection of human rights. While South Africa has been relatively successful in this endeavour, Uganda seems to be quickly sliding back into a dictatorship with a human rights record that might soon rival that of the days of Idi Amin.⁴ Before the advent of this slippery slope however, Uganda had a lot in common with South Africa insofar as constitutional and human rights developments were concerned. In 1994 South Africa entered a new political and constitutional era the highlight of which was the adoption of the interim constitution,⁵ and later the final constitution.⁶ At around the same time, Uganda adopted a new constitution of its own.⁷ Both countries' constitutions have a Bill of Rights. In drafting its constitution Uganda took guidance from the then newly adopted South African Interim Constitution. As a result, both the Ugandan Constitution and the South African Constitution contain provisions establishing certain national human rights institutions, a comparison of which forms the basis of this article.

2 THE RELEVANT HUMAN RIGHTS INSTITUTIONS

It is not an easy task to find a common definition of the term "national human rights institution". Indeed, there is no single definition of what constitutes a national human rights institution as many such institutions are perceived according to the nature and extent of their human rights mandate. However, the United Nations Centre for Human Rights has described a national human rights institution as "a body which is established by a government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights".⁸ The structure and number of national human rights institutions may vary considerably between countries, depending on the unique political, historical, cultural, and economic environment of each country.⁹

⁴ Idi Amin's eight-year rule (1971 to 1979) was mainly characterized by drastic economic decline, widespread social disintegration and massive human rights violations. It is estimated that more than 500,000 Ugandans lost their lives during Amin's reign of terror and murder mainly through arbitrary executions and disappearances at the hands of government agents and agencies.

⁵ The Constitution of the Republic of South Africa Act 200 of 1993.

⁶ The Constitution of the Republic of South Africa Act, 1996 (hereinafter "the 1996 Constitution").

⁷ The Constitution of the Republic of Uganda, 1995.

⁸ See United Nations Centre for Human Rights, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, Professional Training Series No 4 4-6, UN Doc HR/P/PT/4, UN Sales No E.95.XIV.2 (1995).

⁹ See Reif "Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection" 2000 13 *Harvard Human Rights Journal* <http://www.law.harvard.edu/students/orgs/hrj/iss13/reif.shtml> (accessed 16 June 2006).

A national human rights institution may be established by the constitution or by the legislative or executive branch of government.¹⁰ In South Africa, most of the relevant institutions were established under the 1993 interim constitution, under the title of “State institutions supporting constitutional democracy”.¹¹ Chapter 9 of the 1996 Constitution, with a similar title, provides for and establishes the following

“state institutions [to] strengthen constitutional democracy in the Republic:

- (a) The Public Protector
- (b) The South African Human Rights Commission;
- (c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- (d) The Commission for Gender Equality;
- (e) The Auditor-General; and
- (f) The Electoral Commission.”¹²

Although almost all these institutions play some role in the promotion and protection of human rights, this paper will focus on only the first four (a-d) as they are more directly relevant to the theme of the paper than the last two (e-f).

In so far as Uganda is concerned, the relevant institutions include the Uganda Human Rights Commission, the Inspectorate of Government, the Electoral Commission, the Auditor-General and the National Planning Authority (on health and education). For purposes of this paper we will only focus on the Human Rights Commission and the Inspectorate of Government, both of which are established by the 1995 Ugandan Constitution.

3 HUMAN RIGHTS INSTITUTIONS IN SOUTH AFRICA

3 1 The Public Protector

The office of the Public Protector was initially created by the 1993 Constitution.¹³ Under the 1996 Constitution the powers and functions of this functionary are laid out in section 182. It states:

“The Public Protector has the power as regulated by national legislation

- (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 that conduct; and
- (c) to take appropriate remedial action.”

¹⁰ *Ibid.*

¹¹ Chapter 8 of the Interim Constitution.

¹² S 181(1) of the 1996 Constitution.

¹³ See fn 11 above.

The Public Protector has the additional powers and functions prescribed by national legislation.¹⁴ The Public Protector is obliged to be accessible to all persons and communities,¹⁵ but may not investigate court decisions.¹⁶ Any report issued by the Public Protector must be open to the public, unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.¹⁷

The role of the Public Protector in the protection of human rights is rather indirect. A close look at section 182(1) reveals that the functions of this office are threefold, namely, to investigate any improper conduct in state affairs or public administration, to report such conduct and to take appropriate remedial action. It may be argued that in performing these functions, human rights abuses resulting from state misconduct and public maladministration are curbed.

3 2 The Human Rights Commission

Like the Public Protector, the Human Rights Commission was also initially established by the 1993 interim Constitution.¹⁸ Under the 1996 Constitution the powers and functions of the Commission are laid down in section 184. Firstly, the Commission is obliged 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.”¹⁹

Secondly, the Commission has the powers as regulated by national legislation, necessary to perform its functions, including the power to investigate and to report on the observance of human rights, to take steps to secure appropriate redress where human rights have been violated, and to carry out research and education.²⁰

In the particular context of the protection of second and third generation rights, section 184(3) is of critical importance. It obliges relevant organs of state to provide the Human Rights Commission with information on an annual basis, on the measures that they have taken towards the realisation of the socio-economic rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. Under section 184(4) the Commission has the additional powers and functions prescribed by national legislation.

¹⁴ S 182(2). In that regard, the Public Protector Act 23 of 1994 adds to the powers and functions of the Public Protector by expanding his/her powers of investigation and by prohibiting any contempt of the Public Protector.

¹⁵ S 182 (4).

¹⁶ S 182(3). This is in line with s 165 of the 1996 Constitution which entrenches the independence of the judiciary.

¹⁷ S 182(5).

¹⁸ S 115 of the Interim Constitution.

¹⁹ S 184(1).

²⁰ S 184(2).

A closer look at section 184 will reveal that the Human Rights Commission has extensive powers and performs important functions insofar as the protection of human rights is concerned. It exercises those powers and carries out those functions in various ways. These include education and public awareness, making recommendations to Parliament, reviewing legislation, investigating alleged violations of human rights and assisting victims of human rights violations to secure redress. By carrying out these functions the Commission serves a pivotal watchdog function regarding human rights protection. It has been argued, however, that the Commission has done little insofar as human rights education is concerned and that the human rights agenda of the Commission needs to be examined and redirected.²¹ According to Sarkin, “the present focus has been criticized for focusing on the ‘softer’ human rights issues and ignoring core, major and difficult human rights issues with major relevance to South Africa”.²²

3 3 The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

This Commission is another important human rights watchdog established by the 1996 Constitution. Its primary objectives are set out under section 185(1) as follows:

- “(a) To promote respect for the rights of cultural, religious and linguistic communities;
- (b) To promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
- (c) To recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.”

It can be seen that the main purpose of this commission is to promote respect for all the cultures, languages and religions in South Africa. As such it has power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.²³ The Commission may also refer any matter to the Human Rights Commission for investigation.²⁴

²¹ See Sarkin “An Evaluation of the Role of the Independent Complaints Directorate for the Police, the Inspecting Judge for Prisons, the Legal Aid Board, the Human Rights Commission, the Commission on Gender Equality, the Auditor-General, the Public Protector and the Truth and Reconciliation Commission in Developing a Human Rights Culture in South Africa” 2000 15 *SA Public Law* 385 405.

²² *Ibid.*

²³ S 185(2).

²⁴ S 185(3).

3 4 The Commission for Gender Equality

Both the 1993 interim Constitution and the 1996 Constitution provide for the establishment of a Commission for Gender Equality. The object of the commission is to promote respect for gender equality and as such it is mandated with the development and attainment of that equality.²⁵ The commission has the power, as regulated by national legislation, necessary to perform its functions including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality.²⁶

Clearly the Commission for Gender Equality has an important role to play in the promotion and protection of women's rights insofar as equality is concerned. It also has a vital responsibility of influencing attitudes towards women in a society that has traditionally overlooked and disregarded the equal status of women and men. However, since its inception the Commission has had a low profile and has most of the time been embroiled in controversy.²⁷ As such it has hardly executed its constitutional mandate in any meaningful way.

4 HUMAN RIGHTS INSTITUTIONS IN UGANDA

As mentioned earlier, the discussion in this article confines itself to the Uganda Human Rights Commission and the Inspectorate of Government, and it is to these that we now turn our attention.

4 1 The Uganda Human Rights Commission

Provision is made under Article 51(1) of the Ugandan Constitution for the establishment of the Uganda Human Rights Commission. The Commission is composed of a Chairperson and not less than three other persons, appointed by the President with the approval of Parliament.²⁸ The Chairperson and members of the Commission have to be persons of high moral character and proven integrity. They serve for a period of six years and are eligible for re-appointment.²⁹ Article 51(2) spells out the functions of the Commission which include, *inter alia*,

- investigating complaints relating to violation of human rights;
- visiting jails, prisons and other places of detention with a view to assessing and inspecting conditions of inmates and make recommendations;

²⁵ S 187(1).

²⁶ S 187(2).

²⁷ See Sarkin 2000 15 *SA Public Law* 408. He gives the example of numerous resignations from the Commission and the 2000 court case between the Commission on one hand and the sacked CEO Colleen Lowe-Morna and Commissioner Faried Essack on the other.

²⁸ Article 51(2).

²⁹ Article 51(4).

-
- establishing a continuing programme of research, education and information to enhance respect for human rights;
 - recommending to Parliament effective measures to promote human rights;
 - creating and sustaining within society, awareness of the Constitution and the law of the country;
 - educating and encouraging the public to defend the Constitution against all forms of abuse and violation; and
 - monitoring the government's compliance with international treaty and convention obligations on human rights.

The powers of the Committee are spelt out in Article 53. The most significant aspect here is that the Commission has the powers of a court and since its inception, it has exercised these judicial powers by making decisions regarding claims of human rights violations.³⁰ Furthermore, in exercising its judicial functions the Commission has the power to question any person and to require any person to disclose any information within his or her knowledge regarding any subject under the Commission's investigation. The Commission also has power to commit persons for contempt of its orders.³¹ Moreover, the Commission has power to release a detained or restricted person and to order payment of compensation or any other legal remedy or redress.³²

The Uganda Human Rights Commission effectively began operations in 1997. In attempting to carry out its functions the Commission had to organize itself into departments and prescribe guidelines and rules or procedure for its tribunal hearings. The Commission also opened regional offices to make its services more proximate to the people. Other achievements of the Commission include a comprehensive programme of education in human rights and the constitution, an organised system of receiving and hearing complaints, publication of regular reports on its activities and effective co-operation with other national and international human rights organizations.

4 2 The Inspectorate of Government

This constitutional functionary has its genesis in the Inspector-General of Government Statute which was enacted in 1987 long before the 1995 Constitution came into being.³³ Section 7 of that statute dealt with the function of the inspectorate, and provided that the Inspector-General was

³⁰ See Oloka-Onyango "Economic and Social Human Rights in the Aftermath of Uganda's Fourth Constitution: A Critical Reconceptualisation" 2004 Paper No 88/2004, Kampala, Centre for Basic Research 41.

³¹ Article 53(1).

³² Article 53(2).

³³ See "Inspector-General of Government" at <http://www.igg.go.ug/functions.htm> (visited 14 June 2006). The Statute is known as the Inspector-General Act of 1978.

“charged with the duty of protecting and promoting the protection of human rights and the rule of law in Uganda”.³⁴ In that regard, one of the functions of the Inspector-General was “to inquire into allegations of violations of human rights committed against any person in Uganda by any person in a public office ...”³⁵

Most of the provisions of the Inspector-General of Government Statute have now been overtaken by chapter thirteen of the 1995 Constitution, through which the Inspectorate of Government has now been constitutionalized. Article 223 establishes the inspectorate and Article 225 spells out its functions which 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.³⁶ It has been opined that these areas “involve human rights issues and therefore the Inspectorate has the potential of complementing the work of the [Human Rights] Commission”.³⁷

It is quite debatable whether the Inspectorate of Government has been successful in executing its mandate. It is common knowledge however, that the Inspectorate is hugely under-funded and understaffed and its efforts are usually frustrated by high ranking government officials who are regular potential subjects of the Inspectorate’s investigations.³⁸ Be that as it may, to the extent that the inspectorate has the potential for building good governance through improving administration, it does play, and will continue to play, an important role in the protection of human rights. There is no doubt that good governance is essential for effective promotion of human rights.³⁹

5 SOME COMPARISONS

Prior to 1994, South Africa was a highly polarized and divided society in which the majority of the people were subjected to gross human rights violations, socio-economic deprivation, political disenfranchisement and denial of access to a variety of amenities and opportunities. It is in recognition of these gross injustices that the preamble of the 1996 Constitution envisions the adoption of the Constitution as an attempt to, *inter alia*, “improve the quality of life of all citizens and [to] free the potential of each person”.⁴⁰ This vision is emphasized by section 1 of the Constitution which spells out a number of values on which a sovereign and democratic South Africa is founded. These values include human dignity, the achievement of equality, the advancement of human rights and freedoms,

³⁴ S 7(1).

³⁵ S 7(1)(a).

³⁶ Article 225(1).

³⁷ See Ssenyonjo “The Domestic Protection and Promotion of Human Rights Under the 1995 Ugandan Constitution” 2002 20(4) *Netherlands Quarterly of Human Rights* 445 479.

³⁸ See “Inspector-General of Government” http://www.igg.go.ug/press_details.php?id=62 (visited 14 June 2006).

³⁹ See Ssenyonjo 2002 20(4) *Netherlands Quarterly of Human Rights* 480.

⁴⁰ See Preamble to the 1996 South African Constitution.

non-racialism and non-sexism. It is against this background that the purpose for the establishment of the chapter 9 institutions has to be seen, namely, the creation of independent institutions to support democracy, to promote the observance of human rights and to protect people from abuse of government power.⁴¹ It is for this reason that chapter 9 of the Constitution establishes so many of these institutions some of which have clearly overlapping mandates.

On the other hand, Uganda's historical problems are of a different nature. Such problems were mainly a result of colonial exploitation and autocratic dictatorships. Although these gave rise to human rights abuses, it was not felt necessary to establish so many institutions to address and avert such abuses. As a result, the main human rights institutions established by the Ugandan Constitution were, as was described earlier, the Human Rights Commission and the Inspectorate of Government. The difference between Uganda and South Africa in this regard therefore is the number of the relevant institutions in each country. It could be argued that the greater the number of institutions the higher the level of promotion and protection of human rights. It has however been submitted that there should be a rationalization of the South African Chapter 9 institutions and that a case can easily be made for 'collapsing' some of these institutions with seemingly overlapping mandates into one composite institution.⁴² The argument goes that the Commission for Gender Equality and the South African Human Rights Commission should be collapsed into one and questions whether the Commission for the Protection of the Rights of Cultural and Linguistic Communities should continue to operate as one.⁴³

Another important comparison lies in the level of independence and the jurisdiction of the relevant institutions. There is no doubt that a crucial condition for the effectiveness of these institutions is their independence from all branches of government, particularly the executive branch, which may be a potential target of the institutions' work. In that regard, it is important to note that the Ugandan Constitution declares the Human Rights Commission and the Inspectorate of Government to be independent in the performance of their duties and not subject to the direction or control of any person or authority.⁴⁴ However, while the Commission's independence is only subject to the Constitution, the Inspectorate is only answerable to Parliament. The reason for this differentiated approach is not clear. The approach however is somewhat different from that adopted by the South African Constitution which declares all the Chapter 9 institutions to be independent and subject only to the Constitution and the law.⁴⁵ They are also obliged to be impartial and to exercise their powers and perform their functions without fear, favour or prejudice.⁴⁶ Furthermore, these institutions

⁴¹ See Sarkin 2000 15 *SA Public Law* 386.

⁴² See February "Institutions up for Review" http://www.idasa.org.za/index.asp?page=programme_details.asp%3FRID%3D44 (accessed 15 June 2006).

⁴³ *Ibid.*

⁴⁴ Articles 54 and 226 of the Ugandan Constitution.

⁴⁵ S 181(2) of the South African 1996 Constitution.

⁴⁶ *Ibid.*

are all accountable to the National Assembly and must report on their activities and the performance of their functions to the Assembly at least once a year.⁴⁷ These different levels of independence, impartiality and accountability are quite crucial in the comparison between the human rights institutions in the two countries in the particular context of the role they play in promoting and protecting human rights.

The institutions discussed in this article are by their very nature not only intended to promote and protect human rights, but also to support constitutional democracy. There are three important tenets of democracy. Firstly, democracy is a form of government in which all adult citizens have some share through their elected representatives. Secondly, in a democratic society all citizens treat each other as equals without any discrimination. Thirdly and most importantly, democracy means a form of government which encourages, allows, promotes and protects the rights of its citizens.⁴⁸ What this means is that democracy and human rights protection are inextricably intertwined; one cannot exist without the other. What it also means is that the role of human rights institutions largely depends on the level of democracy in a particular country. As mentioned earlier, South Africa is a multiparty constitutional democracy in which the rule of law largely prevails. Uganda on the other hand is, for all intents and purposes, a dictatorship that is gradually becoming more and more autocratic. What this means, and is proved to be true in practice, is that in South Africa there is a higher level of appreciation, respect, recognition and support for human rights institutions than there is in Uganda. According to one member of the Uganda Human Rights Commission:

“One big problem with our work is that a number of government agencies do not yet appreciate our role. They are shocked when we investigate them. They don't understand it when we investigate government. There has been no direct interference with our independence, but that is not to say that we have not been frustrated at times, as when our inquiries or recommendations are not acted upon.”⁴⁹

The frustration expressed here is aggravated by the current nature of politics in Uganda. Today, Uganda enjoys the dubious honour of being one of those African countries that are not yet on a clear path towards consolidating democratic and political legitimacy. According to one commentator, “in these countries authoritarian governments have attempted to carefully manage the democratization process and the legitimacy of electoral processes has fallen short of expectations”.⁵⁰ In such countries, the democratic experiment is clearly failing, resulting in what could be referred to

⁴⁷ S 181(5).

⁴⁸ See Mubangizi 8.

⁴⁹ Commissioner Omara as quoted in “Protectors or Pretenders? Government Human Rights Commissions in Africa” http://www.hrw.org/reports/2001/africa/uganda/uganda3.html#P2862_618809 (accessed 17 June 2006).

⁵⁰ See Goldsmith “Risk, Rule and Reason: Leadership in Africa” May 2000 *Africa Notes* Institute for Africa Development, Cornell University, quoted in McMahon “Assessing Democratic Development in Africa” A Discussion Paper prepared for the Development of State/NIC Conference “Africa: What Is To Be Done?” on 11 December 2000 in Washington DC 7.

as “virtual democracies”. Although many positive changes have taken place in Uganda since 1986, the National Resistance Movement government of Yoweri Museveni has stubbornly clung to power. Until recently, the main political characteristic of this government was mainly the “movement” or “no-party” system which essentially prohibited political activity other than under the Movement itself. There were many arguments for and against this rather strange political philosophy, but it was generally agreed that any political system that restricts or prohibits political parties can only be undemocratic. Recent attempts to introduce multi-party politics were compromised by the flagrant violation of the constitution by amending it to allow Museveni a third term into the office that he has now technically occupied for 20 years.

In this type of political and democratic situation, human rights institutions are faced with enormous challenges. Unlike Uganda, South Africa has not had to deal with such political shenanigans since the advent of constitutional democracy in 1994. Accordingly, human rights institutions in South Africa have been spared the political challenges and difficulties faced by their Ugandan counterparts. It could therefore be argued that human rights institutions in Uganda have a bigger and more difficult role to play in promoting and protecting human rights.

Effective protection and promotion of human rights cannot be achieved solely through legislative and administrative arrangements. In recognition of this fact, human rights institutions are often entrusted with the important responsibility of improving public awareness of human rights. Accordingly, I have argued elsewhere that the effective enjoyment or enforcement of human rights largely depends on the level of public awareness of such rights and of the mechanisms and institutions through which to enforce them.⁵¹ To that end, I have conducted research both in Uganda and South Africa aimed at, among other things, determining the levels of public awareness and perceptions towards human rights and the human rights institutions in both countries.⁵² The results of the surveys are quite interesting. Only those aspects relevant to this discussion will be mentioned here. Firstly, the surveys showed that there is clearly a higher level of public awareness of the constitution and the bill of rights in Uganda than there is in South Africa.⁵³ Secondly the surveys showed that the level of public awareness of human rights institutions is much higher in Uganda than in South Africa.⁵⁴ These

⁵¹ See Mubangizi 145.

⁵² For a more detailed analysis of the results of the survey in South Africa see Mubangizi “Protection of Human Rights in South Africa: Public Awareness and Perceptions” 2004 29(1) *Journal for Juridical Science* 62; *The Protection of Human Rights in South Africa: A Legal and Practical Guide* (2004); and for a detailed analysis of the results of the survey in Uganda, see “The Protection of Human Rights in Uganda: Public Awareness and Perceptions” 2005 1(3) *African Journal of Legal Studies* 166.

⁵³ In Uganda only 10.8% of the respondents had never heard of the constitution and 21.4% said they were not aware that it contained a chapter on human rights. In South Africa on the other hand, 33.2% of the respondents said they had never heard of the Bill of Rights.

⁵⁴ According to the survey, about three quarters of the Ugandan respondents (75.7%) were aware of the existence of the Uganda Human Rights Commission and the work it does. Only 24.3% claimed they had never heard of the Commission. A similar trend is reflected in the responses regarding public awareness of the existence of the office of the Inspector-General of Government (IGG). A total of 80.8% of the respondents claimed to have heard of

findings may seem to be rather misleading, considering that the level of human rights protection is deemed to be higher in South Africa than it is in Uganda. The fact of the matter however, is that the Uganda Human Rights Commission has a lot to do with this. Since its inception, the UHRC has made human rights education a priority of its work. According to a Human Rights Watch report, "in order to reach a population which remains largely rural and often illiterate, the UHRC has broadcast popular weekly radio broadcasts on human rights topics in five languages, and has participated in a number of television programs on human rights topics".⁵⁵ The report states further that:

"In addition, the UHRC engaged in a large number of civic education seminars for local leaders, religious groups, NGOs and other civil society organizations. A number of informational booklets were produced by the UHRC aimed at educating citizens about their fundamental human rights. The UHRC has collaborated broadly in its education mandate and sought to involve both the nongovernmental community and other government departments. The UHRC created a Civic Education Coordination Committee, chaired by the UHRC, that includes two NGO representatives and government representatives from the electoral commission, the Inspector General's office, and the judicial service commission among others."⁵⁶

Human rights education is one the main activity that the Uganda Human Rights Commission is strongly credited for. Obviously, the public education campaign seems to have had some effect. There are other factors responsible for the higher levels of public awareness of human rights and human rights institutions in Uganda than in South Africa. These include a higher level of general and basic education in Uganda and the fact that in South Africa, there are other means of addressing human rights violations, including a vibrant and effective judicial system. The point has to be made yet again that the Ugandan human rights institutions are playing and continue to play a more difficult role of promoting and protecting human rights in a society that has few other effective mechanisms.

The nature of human rights protected and the way in which such protection is entrenched in the constitutions of the two countries is an important area on which a comparison of the role of human rights institutions can be based. It is generally believed that the South African Bill of Rights is one of the most progressive in the world mainly because it contains all categories of human rights that are ordinarily included in most international human rights instruments. Among these are the first generation rights (which include the traditional civil and political rights) and the rather controversial

the office of the IGG as opposed to 19.2% who had not. As far as South Africa is concerned, about half of the respondents (49,7%) claimed they had never heard of the Human Rights Commission or the work it does, about two-thirds of the respondents (66,4%) had not heard of the Public Protector's office and its work and only less than half (47,8%) of the respondents said that they had heard of the Commission on Gender Equality and its work.

⁵⁵ See "Protectors or Pretenders? Government Human Rights Commissions in Africa" http://www.hrw.org/reports/2001/africa/uganda/uganda3.html#P2862_618809 (accessed 17 June 2006).

⁵⁶ *Ibid.*

second and third generation rights (which include social, economic and cultural rights).

Unlike the South African Bill of Rights, the bulk of the rights contained in chapter four of the 1995 Ugandan Constitution mainly belong to the category of first-generation rights (which include the traditional civil and political rights). In so far as economic, social and cultural rights are concerned, it is interesting to note that despite Uganda's obligation to the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which it is a party,⁵⁷ the 1995 Ugandan Constitution pays minimal attention to such rights. In this category of so-called second and third generation rights, the only rights provided for under the Constitution are; protection from deprivation of property (Article 26); the right to education (Article 30); the right to work and participate in trade union activity (Article 40); the right to a clean and healthy environment (Article 39) and the right to culture (Article 37). Other important social and economic rights that should ordinarily be included in the bill of rights are laid down in the National Objectives and Directive Principles of State Policy,⁵⁸ thereby making them unenforceable and therefore not justiciable. Such rights include the right to health, water, sufficient food, natural resources and, interestingly, the right to development.

In view of the above, it may well be argued that one of the main differences between the South African and Ugandan human rights institutions lies in the nature of the rights they have to protect. Not only does the South African bill of rights give extensive protection to the so-called socio-economic rights, but it also provides for them in such a way that leaves no doubt about their justiciability by the courts such as the Constitutional Court and their protection by human rights institutions such as the Human Rights Commission. In that regard, it is important to note that section 184(3) of the South African Constitution specifically obliges relevant organs of state to provide the Human Rights Commission with information on an annual basis, on the measures that they have taken towards the realization of socio-economic rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. The Office of the Public Protector plays a more indirect but no less important role than the Human Rights Commission in this regard.

In spite of the differences brought about by the nature of human rights protected in the Bills of Rights of the two countries, the Ugandan Human Rights Commission has shown innovation and tact in protecting socio-economic rights – even those that fall outside the Bill of Rights. It has on several occasions exercised its judicial powers by making decisions regarding claims of socio-economic rights violations. In *Emmanuel Mpondi v The Chairman, Board of Governors, Ngwana High School*,⁵⁹ the Commission dealt with the right to education. Mpondi, a student at the respondent's

⁵⁷ Uganda acceded to the ICESCR on 21 January 1987.

⁵⁸ The National Objectives and Directive Principles of State Policy are a set of objectives set forth in the preamble of the constitution which are supposed to guide all organs of the state or non-state actors in applying or interpreting the constitution or any other law.

⁵⁹ Complaint No. 210/1998 of the Uganda Human Rights Commission.

school had been severely punished by two teachers. After hospitalization and treatment, he returned to school only to be sent back home to collect school fees. His sponsors however refused to pay the fees until the school administration had either punished the teachers, or clearly indicated the specific action that would be taken against them. As a result, Mpondi was forced to leave school for good. In dealing with the issue of his right to education, the Commission held that the claimant's education had been interfered with and his right to education had been violated by the respondents.

In *Kalyango Mutesasira v Kunsu Kiwanuka*,⁶⁰ the Commission dealt with a claim against the Government for the payment of pensions. The Commission took the opportunity to lay down the legal basis on which it derived its powers to investigate human rights violations and to award remedies in the event of a violation. The Commission went on to hold that a person who qualified for pension could claim it as a right. The refusal, neglect or delay in the payment of pension was therefore a violation of human rights. This decision has to be seen in the context of the fact that the Constitution does not categorically provide for the right to social security. It goes to show therefore that the Uganda Human Rights Commission is quite innovative and assertive in the enforcement of socio-economic rights, even going beyond those rights contained in the Constitution. In that regard, the Uganda Human Rights Commission compares favourably with the South African Human Rights Commission in the role of protecting socio-economic rights.

The success of any institution in a particular country largely depends on the availability of resources, facilities, skills and funds. In turn, the availability of all these largely depends on the level of economic development of that country. National human rights institutions are not exempt from this simple reality. Comparatively, South Africa is more economically advanced than Uganda. Accordingly, human rights institutions in South Africa are not subject to the same financial and resource constraints as those in Uganda. In December 2003 for example, the Uganda cabinet proposed that the Uganda Human Rights Commission should be abolished and its functions transferred to the Inspectorate of Government. The government claimed and argued that maintaining the two institutions was very expensive and that by abolishing the UHRC and merging its functions with IGG, the government would reduce the cost of running the two institutions.⁶¹ It was only due to the spirited struggle of the members and officials of the commission, and pressure from the donor community that the UHRC survived the proposed merger and possible demise. All this goes to show the extent to which the availability of funds and resources is an important factor in the existence and functioning of human rights institutions. It also shows how budgetary constraints and government interference can be an important factor in the whole equation. Ugandan human rights institutions are more affected by these factors than their South African counterparts and one could argue that

⁶⁰ Complaint No. 501/2000 of the Uganda Human Rights Commission.

⁶¹ See Katendeko "Uganda Needs its Human Rights Commission!" http://www.monitor.ug/peace.org/archive.cfm?id_article=144 (accessed 20 June 2006).

the relative roles played by these institutions in promoting and protecting human rights are affected accordingly.

6 CONCLUSION

In addition to the comparisons discussed above, there are obviously many other minor differences and similarities between human rights institutions in Uganda and South Africa. These differences and similarities relate to issues such as composition and membership, appointments and tenure, and organizational structures of the institutions. The scope and length of this paper do not lend themselves to a detailed discussion of all these and other aspects. Suffice to say that the comparisons discussed mainly relate to the powers, functions, achievements and challenges of the relevant human rights institutions in so far as they affect the promotion and protection of human rights in the two countries. In that regard, it may be concluded that although Ugandan human rights institutions face more challenges than their South African counterparts, a lot has been achieved by the Ugandan institutions in the face of such challenges.

Another important conclusion is that history has been and continues to be an important factor in the role of human rights institutions in the two countries. As such, the importance of these institutions in promoting and protecting human rights in both countries cannot be over-emphasized.

It can also be concluded that there is need for international involvement in strengthening and enhancing the role of human rights institutions particularly in Uganda where, clearly, government interference and lack of democracy are serious threats to the functioning of the institutions. In that regard, co-operation with international organizations and institutions such as the African Union, the African Commission on Human and Peoples' Rights and the United Nations Human Rights Committee is vital.

Finally, it is imperative that African national human rights institutions establish stronger links amongst themselves in order to advise and support each other. In that regard initiatives by some African Human Rights Commissions and Ombudsmen to collaborate and cooperate should be commended and encouraged. Clearly, if the comparisons discussed in this paper are anything to go by, African human rights institutions have a lot to learn from each other.