

Human Rights Commissions in Africa – Lessons and challenges

Chris Maina Peter

Some have argued that there is no reason for establishing special machinery devoted to the promotion and protection of human rights like Human Rights Commissions ... such bodies are not a wise use of scarce resources and that an independent judiciary, democratically elected president and parliament[,] and a vibrant civil society are sufficient to ensure that human rights abuses do not occur. However, where Human Rights Commissions fulfil the prerequisites to effective functioning, there is no doubt that they play an important role in the promotion and protection of human rights. They are complementary to already established institutions and by the nature of their work are in [a] position to make unique contribution[s] to a country's efforts to protect its citizens and to develop a culture that is respectful of human rights and fundamental freedoms.

Margaret Sekaggya¹

Introduction – Implementing human rights

To provide for human rights in international, regional and municipal legal documents is one thing; to ensure the implementation of what is provided is something else. Experience has indicated that it is easier to provide for human rights than it is to implement them. At present, following long and protracted struggles, human rights are provided elaborately at all the three levels: global, regional and municipal. Also, promotion of these rights is equally taken up with ease, mainly by civil society. However, enforcement of rights remains a headache at all levels. This is due to three main reasons: technical blockades; a lack of effective institutions or the existence of weak institutions only; and the lack of political will to implement human rights with differing degrees at all three levels.

One of the methods devised for enforcing human rights at national level is through the establishment of human rights institutions. These institutions go by different names. They are referred to as *Commissions*, *Institutions*, *Ombudsmen*, *Ombudspersons*, etc. in various jurisdictions.

¹ Sekaggya (2004). Margaret Sekaggya is the immediate former Chair of the Uganda Human Rights Commission and is currently a United Nations Special Rapporteur on the Situation of Human Rights Defenders.

These are institutions which, although established by the State, are supposed to be independent of it. Guiding the establishment and operation of these institutions are the Paris Principles of 1993. These principles *inter alia* urge these institutions to maintain their independence notwithstanding their legal status as statutory bodies. Also, States are urged to respect and ensure the independence of these institutions and to fully fund them. This is a rather tricky relationship, which requires both political maturity and tolerance on both sides.

National human rights institutions in Africa

Several African countries have established human rights institutions. These vary considerably in terms of mandate and mode of establishment, and also in terms of the willingness of the State concerned to be subjected to human rights standards. There are currently human rights institutions in about 31 countries, including Algeria,² Angola,³ Benin,⁴ Burkina Faso,⁵ Cameroon,⁶ Chad,⁷ the Democratic Republic of Congo,⁸ Egypt,⁹ Ethiopia,¹⁰ Gabon,¹¹ Ghana,¹² Kenya,¹³ Madagascar,¹⁴ Malawi,¹⁵ Mali,¹⁶ Mauritania,¹⁷ Mauritius,¹⁸ Morocco,¹⁹ Namibia,²⁰

² The National Human Rights Commission of Algeria.

³ Provedor di Justica de Direitos.

⁴ The Benin Human Rights Commission.

⁵ The National Human Rights Commission of Burkina Faso.

⁶ The National Commission on Human Rights and Freedoms.

⁷ The Chad National Human Rights Commission.

⁸ The National Human Rights Observatory.

⁹ The National Council for Human Rights.

¹⁰ The Ethiopia Human Rights Commission.

¹¹ The National Human Rights Commission.

¹² The Commission on Human Rights and Administrative Justice.

¹³ The Kenya National Commission on Human Rights.

¹⁴ The National Human Rights Commission.

¹⁵ The Malawi Human Rights Commission.

¹⁶ Commission nationale consultative des droits de l'homme.

¹⁷ Commissariat aux Droits de l'Homme, a la Lutte contre la Pauvrete et l'Insertion.

¹⁸ The National Human Rights Commission.

¹⁹ The Human Rights Advisory Council.

²⁰ The Office of the Ombudsman.

Niger,²¹ Nigeria,²² Rwanda,²³ Senegal,²⁴ South Africa,²⁵ Tanzania,²⁶ Togo,²⁷ Tunisia,²⁸ Uganda²⁹ and Zambia.³⁰

These institutions are diverse, but all adhere to the Paris Principles of 1993 as their main guidance. Although they are established by the State, they are independent of it, and have two main aims: to promote and to protect human rights.

National human rights institutions (NHRIs) on the continent are loosely organised into a network that has a permanent Secretariat, and that meets from time to time to discuss issues of common interest and to exchange experiences.³¹ These NHRIs have also been meeting in large conferences and issuing documents with far-reaching impact on the continent. Their last meeting was in Nairobi, Kenya, in October 2008, where the Nairobi Declaration was issued.³² The NHRIs in the East African region have been convening since 2004, under the coordination of Kituo Cha Katiba, an East African civil society organisation based in Kampala, Uganda.³³

A sample of NHRIs on the continent

Due to their number and diversity, it is not possible to elaborate on all these institutions. Three have therefore been chosen, and these will be elaborated on at length as samples that can represent others to some extent. The choice has been

²¹ The National Commission on Human Rights and Fundamental Freedoms.

²² The Nigerian Human Rights Commission.

²³ The National Commission for Human Rights.

²⁴ The Senegalese Committee for Human Rights.

²⁵ The South African Human Rights Commission.

²⁶ The Commission for Human Rights and Good Governance.

²⁷ The National Human Rights Commission.

²⁸ The Higher Committee on Human Rights and Fundamental Freedoms.

²⁹ The Uganda Human Rights Commission.

³⁰ The Permanent Human Rights Commission.

³¹ The Danish Institute of Human Rights of Copenhagen, Denmark, has been instrumental in organising and bringing these institutions together.

³² This was the Ninth International Conference of the National Institutions for the Promotion and Protection of Human Rights, held in Nairobi, Kenya, from 21 to 24 October 2008.

³³ Among the issues they have been discussing are the justiciability of economic and social rights in the region, and the preparation of an East African Bill of Rights for use by the East African Court of Justice on the extension of its mandate. On these meetings, see Peter (2008).

deliberate and based purely on availability of information on the institutions chosen. They are the South African Human Rights Commission (SAHRC), the Uganda Human Rights Commission (UHRC), and the Commission on Human Rights and Good Governance of the United Republic of Tanzania (CHRGG).

South Africa: The South African Human Rights Commission

The SAHRC is one of the most respected NHRIs in Africa. It is well-funded by the State, enjoys considerable independence, and commands a lot of respect from the population in the country. It is one of the many institutions established in post-apartheid South Africa to address the ills associated by years of racial discrimination in the country.

The SAHRC was established in 1995, following the coming into force of the Human Rights Act, 1994.³⁴ Also relevant to this institution is Article 184 of the South African Constitution of 1996,³⁵ which partially provides for its functions.

The set-up and structure of the SAHRC

The SAHRC has headquarters in Johannesburg as well as regional offices. The main offices at the headquarters are those of the Chairperson, the Chief Executive Officer, Media Relations, Communications and Publications, Complaints Registration, Human Resources, Legal Services, Education and Training, Research and Documentation, and the Promotion of Access to Information Act Office.³⁶

The regional offices are situated in the Eastern Cape Province (in East London); the Free State Province (in Bloemfontein); the Gauteng Province (in Houghton); the KwaZulu-Natal Province (in Durban); the Limpopo Province (in Polokwane); the Mpumalanga Province (in Nelspruit); the Northern Cape Province (in Upington); the North West province (in Rustenburg); and the Western Cape Province (in Cape Town). Therefore, the country is relatively well covered by the Commission.

³⁴ Act No. 54 of 1994.

³⁵ See the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) adopted on 8 May 1996.

³⁶ This office within the Commission is supposed to promote the operation of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

Composition of the SAHRC

While taking into account the requirements of the Paris Principles in the process of making appointments to the SAHRC, the leadership in South Africa also gave due regard to the history and social set-up of the country. Therefore, in appointing Commissioners, a candidate's colour, ethnic origin, professional background and history played a central role. For instance, it would do more harm than good to the Commission and the country to appoint a person who had been a very active supporter of the apartheid regime.

In order to make the Commission self-sustaining in handling the issues submitted to it, it was necessary to mix disciplines among the Commissioners appointed. This also assisted the Commissioners themselves in respect of allotting themselves Commission work, by taking their respective specialisations into account.

The current Commission is chaired by Mr Jody Kollapen, while Ms Zonke Majodina is his Deputy. Other members include Mr Leon Wessels and Mr Tom Manthata, who are full-time Commissioners, while Mr Karthy Govender is a part-time Commissioner. The Chief Executive Officer of the Commission is Adv. Tseliso Thipanyane.

Mandate of the SAHRC

The SAHRC has three main functions. These are, firstly, to promote respect for human rights and a culture of human rights; secondly, to promote the protection, development and attainment of human rights; and thirdly, to monitor and assess the observance of human rights in the country.³⁷

In order to be able to carry its mandate, the Commission has been granted wide powers under the law. These include 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.³⁸

At the same time, the Commission has a duty to various relevant organs of State to provide itself with information on the measures that these State organs

³⁷ See Article 184(1) of the Constitution of the Republic of South Africa. On this see Van Zyl (2004:30).

³⁸ Article 184(2), Constitution of the Republic of South Africa.

have taken each year towards the realisation of the rights in the Bill of Rights concerning housing, health care, food, water, social security, education and the environment. Other powers and functions of the Commission are stipulated in the Human Rights Commission Act, 1994.³⁹

Inquiries by the SAHRC

The SAHRC has one of the most active tribunals. It has handled almost all issues listed in the South African Bill of Rights and has made substantial decisions on the matters presented to it for consideration. Within its very busy schedule, the Commission Tribunal has had the opportunity to address issues relating to access to information;⁴⁰ children;⁴¹ culture;⁴² education;⁴³ equality;⁴⁴ freedom

³⁹ Act No. 54 of 1994.

⁴⁰ See the case of *Brian Williams v Department of Labour* (1999), in which the complainant had alleged denial of access to certain reports which were important to his defence in disciplinary proceedings against him.

⁴¹ See the case of *Crawford College* (2000), which involved the question of suspension from school of a Muslim student in a predominantly white college who had placed an article on the Notice Board on the Palestinian/Israel issue which differed from another article on the same Notice Board.

⁴² See the case of *Customary Law v Bill of Rights* (2000) which relates to a 'husband' charged with rape, abduction and assault of his 14-year old 'wife' whom he 'married' under Twala customary law. Also relevant is the case of *Re: Constitutionality of the Practice of Mogaga* (1999), which dealt with the issue of a widow who was being forced to perform certain traditional practices as a result of the death of her husband. These practices were against her religion.

⁴³ See the case of *Rastafarian Learners* (2000) involving a seven-year-old Rastafarian boy who was refused admittance to four schools because of his parents' religion. Relevant to this case is De Vos (2001a:305). Also important to the right to education is the case of *Right to Education* (2000) relating to the failure by the Eastern Cape Provincial Government to pay the necessary hostel, transport and boarding subsidies which would enable children who live far from school to attend as their parents could not afford to pay these prohibitive costs without financial support.

⁴⁴ A considerable number of cases on the theme of equality have been handled by the Commission. These include *Foreign Doctors Association* (1997) on allegations of discrimination on registration; *Blood Transfusion and Sexual Orientation* (1999) on the refusal to donate blood by a person who admitted to having had sex with a person of the same gender; *Discrimination on the Basis of Age* (1999) on the denial of a bursary to pursue studies due to age; *South African Airways* (1998) on the refusal by the airline to transport a quadriplegic passenger without an attendant; *St. Lucia and the Equality Covenant* (2000) on media reports of racism in the St Lucia area; *An Investigation Into the Conditions at Ambulance and Rescue Services* (1997) which related to allegations of discrimination in

of association;⁴⁵ freedom and security of the person;⁴⁶ freedom of expression;⁴⁷ freedom of religion, belief and opinion;⁴⁸ housing, and human dignity;⁴⁹ language and culture; and property⁵⁰ – just to mention some of the areas addressed. It is common to find an individual case addressing several human rights issues. For instance, a case on labour relations may also be dealing with discrimination, and so on.

Some of the decisions of the Commission have been quite instructive – not only to the community, but to other institutions and authorities dealing with human rights issues in the country as well.⁵¹

Evaluation of the work of the SAHRC

It has been observed that due to the very nature of the South African society and its history, there were wide expectations on the Commission from the population. Therefore, there is a likelihood of passing an unjustifiably harsh judgement on the performance of the Commission.

Over the years, the Commission has been overwhelmed by the many complaints filled by the citizens. It has therefore tended to spend most of its time and

the provision of ambulances in the Western Cape Province; and *Saldahna Bay Real Estate Proprietor* (1998) on a complaint about direct racial discrimination against blacks by a proprietor of a block of apartments. On this theme, see also De Vos (2001b:139).

⁴⁵ See the case of *Initiation Ceremonies* (2001), relating to subjecting a student to school initiation practices done by students with tacit approval by school authorities.

⁴⁶ See the case of *Sr. Nthadi Kotsi and the Mental Health Act* (2001) on an employee who was being detained in a mental hospital against her will.

⁴⁷ See the case of *Federal Council of the National Party v Maharaj Kasrils and Mokaba* (1997) on utterances alleged to constitute hate speech; *General Constand Viljoen v Dunisani Makhaye* (1999), also on statements alleged to amount to hate speech; and *Portfolio Committee Testimony* (1999) on allegations of the use of inappropriate language in a parliamentary committee.

⁴⁸ See the case of *Goudin Spa Membership* (2000) on allegations of being denied membership to a holiday resort on religious grounds.

⁴⁹ See the case of *International School* (1999), involving parents of a high school student who had committed suicide due to repetitive questioning by the school authorities regarding alleged misconduct.

⁵⁰ See the case of *Unfair Traditions Overruled* (1998) on a tradition which denied a woman the inheritance of her parents' property on the grounds of gender.

⁵¹ This can easily be detected in the decisions made by the courts of law on fundamental rights. See Davis et al. (1997).

resources addressing these with very little time spared for its strategic thinking. With the economic gap widening at a high speed between the various classes in the country and with poor being driven deeper into poverty, the work and focus of the Commission is not likely to change soon.

Uganda: The Uganda Human Rights Commission (UHRC)

The UHRC was established vide the Constitution of Uganda of 1995.⁵² This Constitution was the first in the country to have been prepared through the genuine consultation of Ugandans in all walks of life.⁵³ Thus, the population felt proud to be associated with it.

Having suffered many years of military and other forms of dictatorships, the people of Uganda wanted a new chapter in their lives. Therefore, the decision to establish a permanent body to monitor the human rights situation in the country served to recognise a violent and turbulent history characterised by arbitrary arrest, detention without trial, torture, and brutal repression with impunity on the part of security organs. Therefore, to Ugandans, human rights were central – hence the entrenchment of an institution to deal with human rights. It is understandable, therefore, that a substantive part of the Constitution addressed fundamental rights and freedoms as well as the Commission to oversee their implementation.

The set-up and structure of the UHRC

The UHRC has put in place various Departments and Committees to carry out its work. At the headquarters in Kampala are five Directorates. These are as follows:

- The Directorate of Research, Education and Documentation, whose overall goal is to carry out human rights research, design human rights programmes, and create human rights awareness among the people of Uganda

⁵² The Uganda Human Rights Commission is provided for in the Bill of Rights of Uganda, constituting Chapter 4 of the Constitution, and running from Articles 20 to 58. The Commission is specifically dealt with in Articles 48 to 58. This part of the Constitution has to be read together with the Uganda Human Rights Commission Act, 1997 (No. 4 of 1997), and the Operational Guidelines of the Uganda Human Rights Commission of 1998.

⁵³ On the history and process that led to the Uganda Constitution as documented by the Chair of that process, see Odoki (2005).

- The Directorate of Finance and Administration, which is tasked with coordinating the functioning of the Commission as a whole, particularly in respect of organising support services, managing human resources and the human resource needs of the Commission. and monitoring the implementation of the corporate plan of the Commission
- The Directorate of Complaints, Investigation and Legal Services, which has the objective of providing legal redress to victims of human rights violations and abuse, and providing legal advice to the Commission
- The Directorate of Monitoring and Inspections, whose duty is to monitor the country's compliance with its international obligations, visit detention facilities, and prepare Commission reports, and
- The Directorate of Regional Services, which is responsible for taking the Commission's services to the people at grass-roots level in the regions.

The Commission also has regional offices in Arua, Fort Portal, Gulu, Jinja, Mbarara, Moroto and Soroti.⁵⁴

Composition of the UHRC

The Commission is chaired by the Hon. Margaret Sekaggya. Hon. Sekaggya, who has been with the Commission since its inception in 1996, is a lawyer of long standing, with extensive experience in teaching and the judiciary both within and beyond Uganda. She also currently serves as the Chairperson of the African National Human Rights Institutions Coordination Committee. Other Commissioners include Hon. Aliro Omara Joel, also a lawyer, whose interests lie not only in human rights, but also in international humanitarian law. Hon. Joel has worked in government and private practice. Hon. Veronica Eragu Bichetero is also a lawyer, but her interest lies in commercial law. Hon. Constantine Kahwa Karusoke, an educationist, taught and headed various schools before joining politics and government, in which arenas she has served for some time. Hon. Sir Adrian Sibbo, a seasoned civil servant with a long career in government and politics, has served as a board member of many national and regional institutions. Hon. Mariam Fauzat Wangadya, a lawyer with a special interest in the rights of children as well as civil and political rights. In the first part of 2008 the Commission lost one of its original members, the Hon. Rev. Dr

⁵⁴ Arua was the latest regional office to be added to the list as part of the Commission's efforts to take services to the people of Uganda. It was officially opened on 18 November 2008.

Fr John Mary Waliggo, a priest and academic whose interests lay in African history, African theology, justice and peace, conflict resolution, constitutions and constitutionalism, and ecumenism. It is obvious from the above that this is a very solid team.

However, most of the Commissioners in the current Commission are on their way out, having completed their tenure. Therefore, in early 2009, the UHRC will have many new members.

The Secretary to the Commission is Gordon T Mwesigye, an economist who is the Chief Accounting Officer and Executive Administrator of the Commission's day-to-day work. Mr Mwesigye has extensive experience as a local government and management consultant with various institutions, including the World Bank in Uganda and Sierra Leone.

Mandate of the UHRC

Under the Constitution of Uganda of 1995, the functions of the UHRC are to –

- investigate, at its own initiative or on a complaint made by any person or group of persons, the violation of any human right
- visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting the inmates' conditions and make appropriate recommendations
- establish a continuing programme of research, education and information to enhance the respect of human rights
- recommend to Parliament effective measures to promote human rights, including the provision of compensation to victims of violations of human rights, or their families
- create and sustain within society an awareness of the provisions of the Constitution as the fundamental law of the people of Uganda
- educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation
- formulate, implement, and oversee programmes intended to inculcate in the citizens of Uganda an awareness of their civic responsibilities and an appreciation of their rights and obligations as free people, and
- monitor the government's compliance with its obligations under international treaties and conventions on human rights.⁵⁵

⁵⁵ Article 52(1), Ugandan Constitution.

Under Article 52(2) of the Ugandan Constitution, the Commission is required to publish periodic reports and submit annual reports to the Ugandan Parliament on the state of human rights and freedoms in the country. The Commission has adhered to its commitment without fail over the years.

Unlike many other similar institutions, the UHRC has been given teeth by the Constitution. It can, therefore, like a court of law, —⁵⁶

- summon or order any person to attend before it and produce any document or record relevant to any investigation by the Commission
- question any person in respect of any subject matter under its investigation
- direct any person to disclose any information within his or her knowledge relevant to any investigation by the Commission, and
- commit persons for contempt of its orders.

In addition, the Commission, if satisfied that there has been a violation of human rights or freedoms, may order the release of a detained or restricted person, and payment of compensation or any other legal remedy or redress. Any person or authority dissatisfied with an order made by the Commission has the right to appeal to the High Court.

There are also limitations to what the Commission can do. For example, the UHRC is barred from investigating any matter pending before a court or judicial tribunal, or a matter involving the relations or dealings between the Ugandan Government and the government of any foreign state or any international organisation, or a matter relating to the exercise of the prerogative of mercy.

Inquiries by the UHRC

The Commission holds inquiries on an almost daily basis in its various offices in the country.⁵⁷ Its cause list reads like that of a court of law. The majority of inquiries are heard by a single Commissioner.

In these inquiries, the UHRC has been meting out penalties to those found in fault. In 2007, for example, the Commission ordered payment of Ugandan Shs

⁵⁶ Article 53(1), Ugandan Constitution.

⁵⁷ In November 2008 alone, there were 55 inquiries held the Commission in Gulu, Fort Portal, Kampala and Soroti.

445,440,000⁵⁸ as compensation to victims of human rights violations. The order of compensation to torture victims alone attracted Ugandan Shs 322,790,000,⁵⁹ representing 72.5% of the total compensation awarded in 2007. By the time of publication of the Commission's 2007 Report, there was no clear indication from the Ministry of Justice and Constitutional Affairs as regards how many complainants had been compensated and/or paid damages as ordered by UHRC Tribunals during 2007.

In order of frequency, major respondents before the Tribunal were the Uganda Police Force; the Uganda Peoples' Defence Forces; private individuals; the Uganda Prisons Services; the Chieftaincy of Military Intelligence; the Local Administration; and the Wildlife Authority. These are institutions with immense capacity to do harm because they employ a considerable number of people and the activities they perform involve some use of force.

Among the challenges faced by Tribunals are insecurity in places such as Karamoja in the north of the country, the human resource gap in respect of Hearing Commissioners, and the payment of compensation to victims of human rights violations is very slow.⁶⁰

Evaluation of the work of the UHRC

The UHRC has been doing very well so far. It has managed to carve for itself a specific niche in its bravery in promotion and protection of human rights in Uganda. Without fear, it has confronted government departments against which complaints have been made and demanded for explanation and commitment to reform. Top notch politicians have been summoned to its inquiries and have responded.

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

⁵⁸ About US\$207,181 (US\$1 = Ugandan Shs 2,150).

⁵⁹ About US\$150,134 (US\$1 = Ugandan Shs 2,150).

⁶⁰ See the Commission's Annual Report for 2007.

in upholding human rights, fundamental rights and freedoms and rule of law in general.

Tanzania: The Commission for Human Rights and Good Governance of the United Republic of Tanzania – CHRGG

The CHRGG was established in 2000 when it was incorporated into the Constitution of the United Republic of Tanzania. It became operational in 2001 when specific legislation was enacted to provide for its various functions.⁶¹

However, the CHRGG was not the first human rights institution in the country. It replaced the Permanent Commission of Enquiry, whose history is linked to the history of the Bill of Rights in Tanzania. To appreciate this important historical development, we briefly examine the history of the Bill of Rights in Tanzania. The Bill of Rights came to Tanzania rather late. It was incorporated into the 1977 Tanzanian Constitution 1977 in 1984, that is 23 years after independence. As if that was not worrying enough, the Bill of Rights was suspended for a period of three years, allegedly to give the government of the day time to put its house in order. Thus, the Bill of Rights only became judiciable in Tanzania in 1988. The history of the Bill of Rights in Tanzania is pertinent to an appreciation of the value of the human rights institutions in the country.

During the struggle for independence and the negotiations that ensued between the colonial government and the nationalist leaders, there was a tug of war for political control. The British, who were in control of the then Tanganyika, insisted the independence Constitution should contain a Bill of Rights in order to secure the rights of the individual. The nationalist leaders, on the other hand, led by the Tanganyika African National Union (TANU), refused to incorporate such a Bill of Rights, that it would block their initiatives to develop the new country economically. The nationalists had their way and, thus, the Constitution of 1961 did not have a Bill of Rights.

Following the Union between Tanganyika and Zanzibar in 1964, which gave birth to Tanzania, the Interim Constitution of 1965 was prepared. The demand to incorporate a Bill of Rights into this Constitution was met by, among

⁶¹ See Commission for Human Rights and Good Governance Act, 2001 (Government Notice No. 67 of 4 May 2001).

other things, the introduction of an Ombudsman function – the Permanent Commission of Enquiry – which was the first human rights institution in the country. This institution had a limited mandate as it confined itself to bureaucratic maladministration.

Since the Universal Declaration of Human Rights of 1948 was reaching a 50-year milestone in 1998, civil society in Tanzania pressurised the government to establish a proper human rights institution to ensure both the promotion and protection of human rights in the country. It is this pressure which resulted in the establishment of the CHRGG.

The set-up and structure of the CHRGG

The CHRGG is not adequately spread in the country. It currently has two offices in Dar es Salaam: the headquarters and an office at Tancot House; but there is only one office for the whole of Zanzibar. The Zanzibar Office was inaugurated in 2007 after the Revolutionary Government of Zanzibar had accepted that the CHRGG could also operate on the isles.⁶² The latter is led by a Commissioner.

Two additional offices were recently established: one was set up at Mwanza in the Lake Zone, while another was set up at Lindi in the Southern Zone. These two offices are headed by Assistant Commissioners.

Composition of the CHRGG

At the time of the Commission's establishment, civil society insisted – and the government conceded – that they should have some say in the choice of Commissioners. Therefore, a very transparent method of appointing Commissioners emerged, and conforms with the Paris Principles.⁶³ The appointment process is aimed at ensuring that the Commissioners are not only independent, but also competent and qualified. Under this arrangement, once applications are received, a small group comprising members of civil society and some specialists sits to screen the applicants and shortlist the best potential candidates.⁶⁴ The names

⁶² See CHRGG (2008a:5).

⁶³ This procedure is provided for in the Commission for Human Rights and Good Governance (Appointment Procedure for Commissioners) Regulations, 2001 (Government Notice No. 89 of 11 May 2001).

⁶⁴ According to Regulation 6(2), among the civil society organisations included in the

of those identified by this group as qualifying for consideration are advertised in the media for members of the public to give their views on their suitability. The views of the public and other comments are taken to a selection committee, which in turn advises the President of the United Republic of Tanzania. The President is obliged to make the final appointments from among the shortlisted candidates, taking into account the public's input.

Following this arrangement, very competent personalities were appointed to grace the first team of Commissioners.⁶⁵ They have since completed two terms in office. A new Chair and Commissioners have already been appointed via the same method to replace them.⁶⁶ Currently, the Commission is without a substantive Secretary as the former incumbent was appointed as a High Court Judge in July 2008.⁶⁷

The same care was not applied in setting up the Commission Secretariat. For example, civil society did not ensure that qualified staff were recruited to assist the Commissioners. As a result, the Secretariat of the former Permanent Commission of Enquiry was simply transferred to the CHRGG. The consequences have been devastating because the mixture of good Commissioners and a wanting Secretariat has not been producing the desired results. The very first Secretariat did not have a single lawyer besides the Executive Secretary serving on it. Now, with the recruitment of many new lawyers to the Secretariat, things are expected to improve.

screening team are the Tanzania Women Lawyers Association, the Tanganyika Law Society, the Zanzibar Legal Services Centre, the United Nations Association, and the Legal and Human Rights Centre.

⁶⁵ The first team of Commissioners was chaired by Hon. Justice Robert Kisanga, assisted by HE Ambassador Mohamed Ramia Abdiwawa as Vice Chairman. The Commissioners were Hon. Catherine Harriet Mbelwa Kivanda, Hon. Stephen Zachariah Mwaduma, Hon. Jecha Salim Jecha, and Hon. Safia Masoud Khamis.

⁶⁶ The new team is made up of Hon. Justice Amiri Ramadhani Manento (a retired Principal Judge of the High Court of Tanzania) as Chairman, and Hon. Mahfoudha Alley Hamid as Vice Chair. The new Commissioners are Hon. George Francis Mlawa, Hon. Joaquine Antoinette De-Mello, Hon. Zahor Juma Khamis, and Hon. Bernadette Gambishi. They are assisted by two Assistant Commissioners, namely Hon. BL Mugusi in Lindi, and Hon. Fahamu Hamidu Mtulya in Mwanza.

⁶⁷ The Director of the Department of Legal Services in the Commission, Ms Mary Massay, is now acting as the Secretary to the Commission. See CHRGG (2008b:4).

Mandate of the CHRGG

The main function of the CHRGG is to investigate any human rights abuses or maladministration.⁶⁸ It can do this on its own initiative or upon receipt of a complaint or allegation to this effect. Complaints can be lodged by the aggrieved person or any other person acting on behalf of such person, or it can be a person acting in the interest of a group or class of persons.⁶⁹

Following a Commission investigation, where appropriate, it can –

- promote negotiations and compromise between the parties
- report to the appropriate authority or person having control over the person in respect of whose act or conduct an investigation has been carried out, or
- make recommendations to the relevant person or authority on measures to be taken so as to provide an effective settlement, remedy or redress.⁷⁰

There are, however, limitations to what the Commission can do.⁷¹ For instance, it cannot investigate the President of the United Republic of Tanzania or the President of Zanzibar,⁷² or a matter –

- which is pending before a court of law or other judicial tribunal
- involving relations between the United Republic of Tanzania and another foreign state or an international organisation
- relating to the exercise of the prerogative of mercy by the President in which the President has directed otherwise.⁷³

The decisions of the Commission have the status of a recommendation to the appropriate authority or person having control over the person in respect of whose act or conduct an investigation has been carried out.⁷⁴ Therefore, unlike a decision of a court of law which is binding on the person on whom it is directed, this is not the case with the decisions of the Commission.

⁶⁸ Section 15(1), Commission of Human Rights and Good Governance Act, 2001 (Act No. 7 of 2001).

⁶⁹ Section 15(1)(a) and (b), Commission of Human Rights and Good Governance Act, 2001

⁷⁰ Section 15(2), Commission of Human Rights and Good Governance Act, 2001.

⁷¹ The limitations and restrictions on investigations by the Commission are provided at length in Section 16, Commission of Human Rights and Good Governance Act, 2001.

⁷² Section 16(1), Commission of Human Rights and Good Governance Act, 2001.

⁷³ Section 16(2), Commission of Human Rights and Good Governance Act, 2001.

⁷⁴ Section 17(1), Commission of Human Rights and Good Governance Act, 2001.

Inquiries by the CHRGG

Among the CHRGG's investigations to date, it has only conducted one major inquiry. This is the case involving the burning of houses in the Nyamuma village in Serengeti.⁷⁵ The Commission conducted a long and protracted inquiry in Musoma, in which all parties – including the Office of the Attorney-General – were fully involved. The Commission found the District Commissioner and the District Police Chief at fault and recommended that compensation be paid to the villagers. Interestingly, however, on receipt of the CHRGG's decision, the then Attorney-General of Tanzania, Hon. Andrew Chenge, wrote to the then Chairman of the Commission, Hon. Justice Robert Kisanga, informing him that the government was not going to respect or implement the decision. The Commission felt helpless and asked the parties to proceed to the judiciary and seek remedy there.⁷⁶

This is one extreme case, but there are many occasions where the CHRGG's work is completely frustrated by government functionaries who do not care to reply to its letters or hinder its investigative activities. This has led the Commission itself to concede that it is toothless. The net result has been loss of confidence and faith in this important institution by the public.⁷⁷

Evaluation of the work of the CHRGG

In the first phase of its operation, the CHRGG instilled hope in the people of the United Republic of Tanzania. Save for the Secretary to the Commission, who was very slow and highly bureaucratic, the rest of the Commissioners were very active and dynamic. The Chair had a good track record in human rights, for example. He was not only a judge in the highest court in the country – the Court of Appeal of Tanzania – but also a Commissioner in the African Commission on Human and Peoples' Rights, established by the then Organisation of African Unity (OAU) under the African Charter on Human and Peoples' Rights of 1981. Thus, he was an inspirational figure who enjoyed a lot of confidence, not only within the Commission, but in the country at large.

⁷⁵ See the case of *Ibrahimu Korosso & 134 Others together with the Legal and Human Rights Centre v District Commissioner and the Police Officer in Command of Serengeti District together with the Attorney General* (HBUB/S/1032/2002/2003/MARA).

⁷⁶ On this case, see Mashamba (2007); LHRC (2003, 2006a, 2006b).

⁷⁷ See Mkinga (2005).

Unfortunately, the founding legislation did not provide for the staggering tenure procedure for Commissioners so that they could retire at different dates and, in so doing, maintain the institutional memory of the Commission. After the first three years, almost all Commissioners had had their tenures renewed in accordance with the law. In 2008, following the completion of their tenure, all of them left. A brand new Commission exists now, effectively with no institutional memory. In addition, all the new members – save for one Assistant Commissioner⁷⁸ – have no human rights background; they are therefore trying to learn human rights in the office. This in itself is not a bad thing, as long as there is determination. However, it delays the protection of human rights.

At the same time, it is emerging that the Commission is very protective of the government in power. In situations where one would expect the government spokesperson to make a statement, it is the Commission that does so – even in issues which might in future be litigated or brought before it for action. The most disturbing among the issues on which the Commission has indicated its position of late is on the citizens' right to strike. The CHRGG has been urging workers to negotiate with the government instead of going on strike. In this position it is obviously taking sides.

Yet another problem is funding the Commission. Since its inception, the CHRGG has been funded mainly by donors, particularly the Royal Danish Embassy. The latter even funded the building of the premises where the Commission and the Law Reform Commission of Tanzania are based. With donor funds coming to an end, however, the Commission is almost at a standstill, with little if any finances apart from being able to cover normal operational costs. It can hardly function effectively. With that attitude from the government, one cannot sincerely say that human rights in Tanzania are protected. All these hardships notwithstanding, it is important for the members and staff of the Commission to remember what is provided in the Paris Principles, namely that, although they are established by governments, human rights institutions are not part of the government and should be independent of the government.⁷⁹ This is important because, if the

⁷⁸ Assistant Commissioner Fahamu Hamidu Mtulya, who is based at the Commission's Mwanza office, holds two Master of Laws (LLM) degrees in human rights from the Universities of Pretoria, South Africa, and Oslo, Norway, respectively.

⁷⁹ See the Principles relating to the Status of National Institutions adopted as United Nations General Assembly Resolution No. 48/134 of 20 December 1993. These Principles are

people cannot differentiate between the government and the Commission, then they, i.e. the people, have lost the war against human rights abuse. Nobody will take the Commission seriously anymore and that will have effectively sealed its fate. Taking all these issues together, there is no doubt that despite the new Commissioners' enthusiasm, the future of this human rights protection body is not very bright.

Lessons and opportunities from human rights institutions in Africa

Human rights institutions can be very effective instruments in promoting and protecting human rights in Africa. This is because they are flexible, less bureaucratic, and accessible to the common person. Unlike courts of law, which are very technical and procedural, human rights institutions are more relaxed and process matters more quickly.

Also, these institutions offer opportunities for the parties to discuss and negotiate, and thus reach amicable solutions to problems. They are avenues for the peaceful settlement of disputes because, at the end of the day, there are no losers and winners before such institutions. This is what makes the difference between institutions of this nature and courts of law which must pronounce on each every issue that comes before them and say who is wrong and who is right. This is not necessary in the process of the peaceful and amicable settlement of disputes.

Challenges faced by human rights institutions in Africa

Human rights institutions in Africa are confronted by various challenges. First among these is the low level of education of the majority of the people on the continent. This makes the promotion of human rights a mammoth task. These institutions have to prepare very simplified materials and radio and television programmes in order to effectively communicate with the people. This task requires a considerable amount of resources, which most of these institutions do not have.

reproduced in Peter (2008:332). For how national human rights institutions in Africa have been performing in general, see Human Rights Watch (2001).

Secondly, and connected with the first, is funding. Human rights and their promotion and protection are not a priority in most African countries. Therefore, the majority of human rights institutions do not get the levels of funding which will allow them to operate optimally. In most cases, the main projects of these institutions are funded by development partners, the donors, who are at times also forced to meet the administrative and operational costs of these institutions. Thus, when the projects end and the donors leave, the institutions are stranded.

The third major challenge is the lack of political will by the politicians to promote and protect human rights. In most African countries, it is the politicians in power who are at the forefront when it comes to supporting violations of human rights. They are not in a position, therefore, to support any initiatives to sensitise people about their rights. They seem able to find a multitude of ways to block the funding of human rights institutions. Thus, politicians are in most cases the spoilers of many initiatives to promote and protect human rights on the continent.

Fourthly, bad legislation can be a hindrance to the promotion and protection of human rights. The existence of ambiguous law on the powers and functions of human rights institutions is likely to demoralise even the most spirited team of Commissioners and other functionaries of such institutions. Therefore, for a human rights institution to function well, facilitative legislation is essential.

Fifthly, incompetent, biased and politically aligned Commissioners can be a serious problem to the promotion and protection of human rights in a country. Therefore, the system of appointing Commissioners should assist with ensuring these institutions get the best staff possible if human rights are to be properly promoted and protected. These are members of staff who will be able to maintain their neutrality and independence even in the toughest situations and under intense pressure to do otherwise.

Conclusion

A number of people have underplayed the role of national human rights institutions. Others have gone to the extent of trashing them and writing them off as State organs aimed at frustrating the struggle for human rights and fundamental rights and freedoms by civil society.

However, experience has indicated that this is not always the case. Some of these accusations are rarely founded – although the tendency to become government-aligned is definitely rearing its head. If established properly and in accordance with the Paris Principles, and if managed by honest and upright persons with integrity, these institutions can make an immense difference in the struggle to promote and protect human rights at municipal level.

The majority of States are wary of national human rights institutions because of what they do in practice. It is common, therefore, to find such institutions starved of the finances they need to carry out their duties. Lifelines have tended to be thrown to them by the various offices of development partners. However, this should not be allowed to become the tradition. The nation should take ownership of these institutions, and hence, have them funded by the local taxpayer. This requires intense lobbying and sensitisation on the part of the State as well as by the people at all levels.

References

- Carver, R & P Hunt. 1991. “National Human Rights institutions in Africa”. *Occasional Paper No. 1*. Banjul: African Centre for Democracy and Human Rights Studies.
- CHRGG/Commission for Human Rights and Good Governance. 2008a. “Karume pledges to collaborate with CHRAGG”. *The Voice of Haki: The Newsletter of the Commission for Human Rights and Good Governance*, 1(5), July:5.
- CHRGG/Commission for Human Rights and Good Governance. 2008b. “Mrs Msuya appointed Judge of the High Court”. *The Voice of Haki: The Newsletter of the Commission for Human Rights and Good Governance*, 1(5), July:44.
- Davis, Dennis, Halton Cheadle & Nicholas Haysom. 1997. *Fundamental rights in the Constitution: Commentary and cases*. Kenwyn: Juta & Co. Ltd.
- De Vos, Pierre. 2001a. “Freedom of Religion v. Drug Traffic Control: The Rastafarian, the law, society and the right to smoke the ‘Holy Weed’”. In Sarkin, Jeremy, Yves Haeck & Johan Vande Lanotte (Eds). *Resolving the tension between crime and human rights: An evaluation of European and South African issues*. Antwerpen–Apeldoorn: Maklu, p. 305.
- De Vos, Pierre. 2001b. “The role of equality in the South African legal system”. In Lanotte, Johan Vande, Jeremy Sarkin & Yves Haeck (Eds). *The principle*

of equality: A South African and a Belgian perspective. Antwerpen–Apeldoorn: Maklu.

- Drzewicki, Krzysztof. 1999. “Internationalization of human rights and their juridization”. In Hanski, Raija & Markku Suksi (Eds). *An introduction to the international protection of human rights: A textbook* (Second Revised Edition), p 31.
- Government of the United Republic Of Tanzania. 1992. *Report and recommendations of the Presidential Commission on a Single Party or Multiparty System in Tanzania, 1991: On the democratic system in Tanzania (Book I)*. Dar es Salaam: Dar es Salaam University Press.
- Gutto, Shadrack. 1998. “Beyond justiciability: Challenges of implementing/enforcing socio-economic rights in South Africa”. *Buffalo Human Rights Law Review*, 4:79.
- Human Rights Watch. 2001. *Protectors or pretenders? Government Human Rights Commissions in Africa*. New York: Human Rights Watch.
- Kabudi, Palamagamba J. 1995. *Human rights jurisprudence in East Africa: A comparative study of fundamental rights and freedoms of the individual in Tanzania, Kenya and Uganda*. Baden-Baden: Nomos Verlagsgesellschaft.
- Kessing, Peter Vedel. 2000. “Implementation of the Western Ombudsman model in countries in democratic transition”. In Lindsnaes, Birgit, Lone Lindholt & Kristine Yigen (Eds). *National human rights institutions: Articles and Working Papers: Input to the Discussions on the Establishment and Development of the Functions of National Human Rights Institutions*. Copenhagen: The Danish Centre for Human Rights, p 121.
- Kisanga, Robert H. 1984. “Independence of the judiciary in Tanzania”. *Indian Bar Review*, 11(2):135.
- Kjaerum, Morten. 2003. *National human rights institutions implementing human rights*. Copenhagen: Danish Institute for Human Rights.
- LHRC/Legal and Human Rights Centre. 2002. *Tanzania Human Rights Report for 2001*. Dar es Salaam: LHRC.
- LHRC/Legal and Human Rights Centre. 2003. *Protection of wildlife and human rights on the balance sheet: A case of Serengeti killings*. Dar es Salaam: LHRC.
- LHRC/Legal and Human Rights Centre. 2006a. *The human calamity of the evictions at Nyamuma – Serengeti: Legal and human rights implications*. Dar es Salaam: LHRC.
- LHRC/Legal and Human Rights Centre. 2006b. *Tanzania Human Rights Report for 2005*. Dar es Salaam: LHRC.

- Lubuva, Damian Z. 1988. “Reflections on the Tanzanian Bill of Rights”. *Commonwealth Law Bulletin*, 14(2):853.
- Martin, Robert. 1974. *Personal freedom and the law in Tanzania: A study of socialist state administration*. Nairobi: Oxford University Press.
- Mashamba, Julius Clement. 2007. *Enforcing social justice in Tanzania: The case of economic and social rights*. Unpublished thesis submitted in fulfilment of the requirements of the Master of Laws Degree of the Open University of Tanzania.
- Mkinga, Joyce. 2005. “Human Rights Commission says it’s toothless”. *The Guardian* (Tanzania), 22 July.
- Murray, Rachel. 2007. *The role of national human rights institutions at the international and regional levels: The experience of Africa*. Oxford/Portland, Oregon: Hart Publishing.
- Mwaikusa, Jwani T. 1991. “Genesis of the Bill of Rights in Tanzania”. *African Journal of International and Comparative Law*, 3(4):680.
- Nyalali, Francis L. “The Bill of Rights in Tanzania”. *Dar es Salaam University Law Journal*, 8:1.
- Odoki, Benjamin J. 2005. *The search for a national consensus: The making of the 1995 Uganda Constitution*. Kampala: Fountain Publishers.
- Oluyede, Peter A. 1975. “Redress of grievances in Tanzania”. *Public Law*, p 8.
- Pande, BB. 1983. “Protecting the individual against the State through false imprisonment actions: The Tanzanian experience”. *International and Comparative Law Quarterly*, 32:506.
- Peter, Chris Maina. 1992. “Five years of the Bill of Rights in Tanzania: Drawing a balance sheet”. *African Journal of International and Comparative Law*, 4(1):131.
- Peter, Chris Maina. 1995. “Enforcement of fundamental rights and freedoms: The case of Tanzania”. *African Yearbook of International Law*, 3:81.
- Peter, Chris Maina. 1997. *Human rights in Tanzania: Selected cases and materials*. Cologne: Rüdiger Köppe Verlag.
- Peter, Chris Maina (Ed.). 2008. *The protectors: Human Rights Commissions and accountability in East Africa*. Kampala: Kituo Cha Katiba & Fountain Publishers.
- Peter, Chris Maina & Ibrahim Hamisi Juma (Eds). 1998. *Fundamental rights and freedoms in Tanzania*. Dar es Salaam: Mkuki na Nyota Publishers.
- Read, James S. 1973. “Bills of Rights in the Third World – Some Commonwealth experiences”. *Verfassung und Recht in Übersee*, 6:21.

- Read, James S. 1995. “Human rights in Tanzania”. In Legum, Colin & Geoffrey Mmari (Eds). *Mwalimu: The influence of Nyerere*. London/Dar es Salaam/Trenton: James Currey/Mkuki na Nyota/Afric World Press, p. 125.
- Rembe, Nasila S. 1991. *The system of protection of human rights under the African Charter on Human and Peoples’ Rights: Problems and prospects*. Roma/Lesotho: Institution of Southern African Studies.
- Sekaggya, Margaret. 2004. “Value of human rights institutions: Human Rights Commission processes”. Unpublished paper presented at the Regional Workshop on Human Rights Commissions and Accountability in East Africa, organised by the East African Centre for Constitutional Development (Kituo Cha Katiba), 12–13 November 2004, Arusha, Tanzania.
- Shivji, Issa G. 1987. “Rights-struggle and the Bill of Rights in Tanzania”. *Zimbabwe Law Review*, 5:128.
- Van Zyl, DH. 2004. “Justice and its concomitants in a new constitutional dispensation”. In Sarkin, Jeremy & William Binchy (Eds). *The administration of justice: Current themes in comparative perspective*. Dublin: Four Courts Press.
- Widner, Jennifer A. 2001. *Building the rule of law: Francis Nyalali and the road to judicial independence in Africa*. New York/London: WW Norton & Company.