

The Independence of the Uganda Human Rights Commission in Light of the Drafting History of the 1995 Ugandan Constitution

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Abstract

The Uganda Human Rights Commission was legally established as an independent institution by the 1995 Constitution of Uganda, but its independence has been questioned at times due to alleged political influence and lack of resources. The commission relies substantially on government funding for its operations and has faced challenges in carrying out its mandate effectively. The 1995 Constitution, which established the Commission as an independent institution, was adopted after years of political turmoil and human rights violations in the country. The drafting history of the Constitution reflects a clear intention to create a strong and independent Commission to serve as a watchdog for human rights abuses and to promote respect for human rights. However, the independence of the Commission has been challenged by various factors, including political influence, limited resources, and weak enforcement mechanisms. In addition, the Commission has faced criticism for being too closely aligned with the government and not sufficiently independent. This article illustrates and assesses the extent to which the drafting history of relevant constitutional provisions has had some impact on the independence of the Commission. This is done by focusing the discussion on legal and operational independence, financial independence, appointment and dismissal procedures, composition of UHRC membership and tenure of office. It is then concluded that indeed the drafting history of the Ugandan Constitution has had some impact on the independence of the Uganda Human Rights Commission. Nevertheless, the Commission has made significant contributions towards promoting and protecting human rights in Uganda and remains an important institution in that regard.

Keywords: Constitution, drafting history, human rights, Uganda Human Rights Commission, independence.

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1. Introduction

Despite the inclusion of provisions on human rights in the independence constitution,³ the post-independence history of Uganda has been characterised by, *inter alia*, political turmoil and gross human rights violations.⁴ However, the post-independence constitutions did not establish a constitutional body with the specific mandate to promote and protect human rights. Both the 1966⁵ and 1967⁶ Constitutions provided that a person who alleged that his/her rights had been violated had to approach the High Court for redress.

In 1986 the National Resistance Army/Movement took power and suspended the 1967 constitution. In 1988, the government established the Constitutional Commission (the Odoki Commission) with the mandate to travel to different parts of the country and gather the views of Ugandans relating to the issues they wanted the new Constitution to address. The Odoki Commission recommended, *inter alia*, the establishment of an independent human rights commission. This recommendation was included in the Draft Constitution which was debated by the Constituent Assembly and approved. Thus, Article 51 of the 1995 Constitution provides for Uganda Human Rights Commission (UHRC). The functions and powers of the UHRC are provided for under Articles 52 and 53 respectively. Article 54 guarantees the independence of the Human Rights Commission. It states that “[s]ubject to this Constitution, the Commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority.” Other constitutional provisions are also relevant to the independence of the Human Rights Commission. They include those dealing with

³ Arts 17 – 33 of the Constitution (1962). See also Arts 17 – 33 of the Constitution (1966) and Arts 8 – 22 of the 1967 Constitutions.

⁴ See *The Report of the Commission of Inquiry into the Violations of Human Rights (1962 – 1986): Findings, Conclusions and Recommendations* (1993).

⁵ Art 32 of the 1966 Constitution provided that “(1) Subject to the provisions of clause (5) of this article, if any person alleges that any of the provisions of articles 17 to 29, inclusive or clause (1) of article 31 of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the High Court for redress. (2) The High Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of clause (1) of this article and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, or securing the enforcement of, any of the provisions of the said articles 17 to 29, inclusive, or clause (1) of article 31 of this Constitution, to the protection of which the person concerned is entitled: Provided that the High Court shall not exercise its powers under this clause if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law. (3) Any person aggrieved by any determination of the High Court under this article may appeal therefrom to that court. (4) No appeal shall lie from any determination under this article that any application is merely frivolous or vexatious. (5) Parliament may make provision, or may authorise the making of provision, with respect to the practice and procedure of any court for the purposes of this article and may confer upon that court such powers, or may authorise the conferment thereon of such powers, in addition to those conferred by this article as may appear to be necessary or desirable for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this article.”

⁶ See Arts 8 – 22 of the 1967 Constitutions which reproduced substantially Arts 17 – 33 of the 1966 Constitution.

the appointment of the commissioners (Article 51), the expenses of the Commission (Article 55), the removal of the commissioners (Article 56), the appointment of the staff of the Commission (Article 56) and Parliament's powers to make legislation regulating the Commission (Article 57). The purpose of this article is to illustrate the drafting history of the constitutional provisions relevant to the independence of the Uganda Human Rights Commission and assess the extent to which this independence has been guaranteed in practice since 1997 (when the Uganda Human Rights Commission Act was enacted). We will start by illustrating the recommendations of the Odoki Commission.

2. The Constitutional Commission

As mentioned above, the Odoki Commission collected views from different Ugandans on the issues they thought should be addressed in the new constitution. The Commission observed that: *"An overwhelming number of submissions from all levels of society have emphasised the need to have an effective and specialised institution to protect, enforce and ensure the primacy of human rights. In making recommendations on this subject, the Commission has reviewed these proposals in the context of Ugandan experience and relevant experience in other countries."*⁷

Against that background the Commission recommended the establishment of the Human Rights Commission and that its roles and operations had to be based on "at least seven principles" which were "ably advocated by the people."⁸ Of the seven principles, one directly dealt with the independence of the Human Rights Commission. It stated that: *"The Commission should be an independent constitutional institution able to exercise its powers independent of government in order to have the respect and confidence of all Ugandans. This independence should be clearly seen in the appointment of the members of the Commission, the security of their tenure of office and the deliberations of the Commission concerning all government organs and all people of Uganda."*⁹

Other recommendations also indirectly related to the independence of the envisaged Human Rights Commission. For example, members of the Commission had to be of "highest moral integrity in order to ensure complete impartiality of their decisions" and their membership should represent "Uganda's regional, ethnic, religious and political diversity to ensure fair representation and balance."¹⁰ It was also recommended that the Human Rights Commission should have adequate resources to

⁷ Report of the Uganda Constitutional Commission: Analysis and Recommendations (1992) para 7.175.

⁸ As above para 7.176. For a comparative review see Winston, Carla. 2020. "Truth Commissions as Tactical Concessions: The Curious Case of Idi Amin." *The International Journal of Human Rights* 25 (2): 251–73. doi:10.1080/13642987.2020.1773439. Also see Mubangizi, John C. 2020. "The Role and Effectiveness of National Human Rights Institutions: Lessons from Selected African Countries[†]." *Commonwealth Law Bulletin* 46 (3): 519–36. doi:10.1080/03050718.2020.1795897.

⁹ Report of the Uganda Constitutional Commission: Analysis and Recommendations (1992) para 7.176(a).

¹⁰ As above para 7.176(b).

be able to undertake its activities.¹¹ The Odoki Commission emphasised that: *“If the Commission is to be effective, it must have a high degree of independence from government. The people must be satisfied that government and individual politicians, or civil servants cannot influence its work directly or indirectly. It therefore needs to be free to work without direction from government. In addition to an appointment process that ensures the highest quality membership, members of the Commission need to be protected from removal except in case of misbehaviour or other specified grounds. It needs to be assured of funding and staff sufficient to carry out its onerous tasks effectively.”*¹²

The Odoki Commission recommended that for the Human Rights Commission’s independence to be guaranteed, the following measures had to be put in place: *“(a) We recommend that in the performance of its duties in accordance with the Constitution and the law made under it, the Uganda Human Rights Commission should not be under the direction of any person or authority. (b) A member of the Commission should be removed by the President only if found to be incapable of performing his or her functions or guilty of misbehaviour and only after a committee of judges appointed by the Chief Justice has made a recommendation for removal. (c) The Commission should be self-accounting, its administrative expenses, salaries and allowances to be a charge on the Consolidated Fund. (d) The Commission should appoint its own staff and set their terms and conditions in consultation with the Public Service Commission.”*¹³

The recommendations of the Odoki Commission were included in the draft constitution which was debated by the Constituent Assembly. Clause 76 of the Draft Constitution (1993) provided for the establishment of the Human Rights Commission. Clause 79 dealt directly with the independence of the Commission and provided that “[s]ubject to this Constitution, the Commission shall not, in the performance of its duties, be subject to the direction or control of any person or authority.” Other clauses dealt with issues which were relevant to the independence of the Human Rights Commission. These included the appointment process and the qualifications of the commissioners,¹⁴ that the Commission was to be self-accounting¹⁵ and a member of the Commission could only be removed under very limited circumstances.¹⁶ The above recommendations by the Odoki Commission show that Ugandans expected the Human Rights Commission to be independent if it was to carry out its functions effectively. The

¹¹ As above para 7.176(c).

¹² As above para 7.179.

¹³ As above para 7.180.

¹⁴ Cl 76 provided that “(1) ... (2) The Commission shall be composed of a Chairman and not less than three other persons appointed by the President with the approval of the National Council of State. (3) The Chairman of the Commission shall be a Justice of the Supreme Court or a Judge of the High Court or a person qualified to hold such office. (4) The Chairman and members of the Commission shall be persons of high moral character and proven integrity and shall serve for a period of six years and be eligible for reappointment.”

¹⁵ Cl 80.

¹⁶ Cl 81 provided that “[a] member of the Commission may, with the approval of the National Council of State, be removed from office by the President only for inability to perform the functions of his office arising out of physical or mental incapacity or any other cause or, for misbehaviour or misconduct.”

Draft Constitution was debated by the Constituent Assembly which ultimately adopted the new Constitution in 1995. The next section illustrates the manner in which the delegates of the Constituent Assembly dealt with the independence of the Human Rights Commission.

3. The Constituent Assembly

The Constituent Assembly dealt with the debates in two phases. The first phase was the “general phase” in which they informed the Assembly of the views the people they were representing expressed about the draft Constitution. In the second phase, the delegates debated each provision of the draft constitution. We refer to this as the “article-by-article” phase. The issue of the independence of the Human Rights Commission was raised during both phases. During general debates, delegates argued that the people they represented wanted the new Constitution to establish a Human Rights Commission and that such a commission should be independent,¹⁷ permanent¹⁸ or entrenched,¹⁹ strong²⁰ and have the power to release illegally detained people.²¹ One delegate explained that the Human Rights Commission had to be “independent of the executive” and by this he meant that: *“The draft constitution has a provision that human rights commissioners are to be appointed and removed by the President with approval of the Council of State. This role of the National Council of State in this draft constitution should be played by the Parliament so that the Presidential appointment are subject to ratification by the legislature. If left as it is, the position of the Parliament shall be marginal, especially when some of the powers have been transferred to the National Council of State which is dominated, as proposed, by the executive.”*²²

Although the idea of establishing the National Council of State was rejected,²³ the delegate raised a very important issue – the Human Rights Commission had to be independent of the executive. Otherwise, its ability to protect human rights, especially those opposed or perceived to be opposed to the government, would have been weakened.

Another delegate argued that the people she represented were of the view that entrusting the President with the responsibility of appointing the human rights commissioners risked compromising the independence of the Human Rights Commission as “such appointments could become political rewards for presidential supporters” and the human rights commission could lose its “independence and impartiality.”²⁴ She recommended that to guarantee their independence, the commissioners should be appointed by Parliament or a Parliamentary Select

¹⁷ Proceedings of the Constituent Assembly (1994 - 1995) at 524 (Mr Bamwenda); 426 (Dr Byaruhanga).

¹⁸ As above 1456 (Mr Tigwezire); 597 (Mr Kasole Lwanga).

¹⁹ As above 841 (Mr Baguma Isoke).

²⁰ As above 1584 (Mr Abaliwano).

²¹ As above 1339 (Mr Ssekyeyama).

²² As above 364 (Mr Amandrua).

²³ As above 2193 - 2194.

²⁴ As above 868 (Mrs Akech Okullu).

Committee.²⁵ Another delegate argued that the “[t]he Human Rights Commission should be scrapped because it will be useless due to the mere fact that its Chairman will be appointed by the President who in most cases will have ordered the detention [and violation of other rights]. How can one decide against his or her employer who can fire him or her any time?”²⁶ He recommended that the responsibility to protect human rights should instead be entrusted with non-governmental organisations which were doing a “very good job.”²⁷ A similar view was echoed by another delegate who argued that the commissioners should be appointed by a two-third majority of the Members of Parliament as opposed to the President “because the state is normally the chief violator of human rights and also to enhance people's trust in the commission.”²⁸ It was also argued that the constitution should limit itself to proving the functions of the Human Rights Commission and “perhaps [its] relationship with other organs and, then leave the details to the enabling legislation.”²⁹ The above submissions show that all delegates were unanimous that the people they represented wanted an independent Human Rights Commission. These submissions were in line with the findings of the Odoki Commission. Ugandans were concerned that the executive posed a threat to the independence of the Human Rights Commission and suggested some of the ways through which this risk could be mitigated.

During the article-by-article debate of the draft Constitution, delegates expressed their views on the issue of the independence of the Human Rights Commission. It was argued that for the effective protection of human rights, the Human Rights Commission had to be independent in investigating alleged human rights violations³⁰ and its orders had to be obeyed by the security agencies.³¹ The drafting history of the Constitution shows that the delegates spent most of their time discussing the clauses relevant to the powers and functions of the Human Rights Commission.³² Clause 79, which specifically dealt with the independence of the Human Rights Commission, was adopted without debate.³³ Likewise, other clauses which indirectly dealt with the independence of the Human Rights Commission were adopted without debate.³⁴ These were clause 81 (removal of a commissioner from office),³⁵ clause 82 (on the appointment of officers and other employees of the commission)³⁶ and clause

²⁵ As above 868 (Mrs Akech Okullu).

²⁶ As above 999 (Mr Kagimu Kiwanuka).

²⁷ As above 999 (Mr Kagimu Kiwanuka).

²⁸ As above 1170 (Mrs Oryem).

²⁹ As above 1072 (Mr Ruzindana).

³⁰ As above 2200 (Mr Kawere).

³¹ As above 2180 (Mr Mayanja).

³² As above 2180 – 2214.

³³ As above 2213.

³⁴ As above 2213.

³⁵ Cl 81 provided that “A member of the Commission may, with the approval of the National Council of State, be removed from office by the President only for inability to perform the functions of his office arising out of physical or mental incapacity or any other cause or, for misbehaviour or misconduct.” The words “National Council of State” were replaced by “Parliament”, see 2213.

³⁶ Cl 82 provided that “The appointment of the officers and other employees of the Commission shall be made by the Commission in consultation with the Public Service Commission.”

83 (on the powers of Parliament to make to regulate the Human Rights Commission in the performance of its functions).³⁷ Thus, when the Constitution was adopted in 1995, it provided for the independence of the Commission under 54 which states that “[s]ubject to this Constitution, the Commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority.” As will be discussed below, the Constitution includes other provisions which are relevant to the independence of the Human Rights Commission.

The above drafting history shows that the delegates were concerned that the executive was likely to be the major threat to the independence of the Commission. As a result, they wanted to guarantee its independence on the issues such as the appointment and dismissal of the commissioners. Thus, they included a specific provision to deal with the Human Rights Commission’s independence from any person or authority. They also included provisions which are relevant to the independence of the Human Rights Commission generally. In 1997, and pursuant to Article 58 of the Constitution, Parliament enacted the Uganda Human Rights Commission Act.³⁸ This Act also includes provisions which are relevant to the independence of the Commission.

4. The independence of the Commission in practice

4.1. Importance of independence

It is clear from the foregoing discussion that the drafting history of the Ugandan Constitution has an important bearing on the independence of the UHRC not only because the Commission is established by the Constitution but also because the Commission draws its powers and mandate from the very same Constitution. Before we undertake an analysis of the independence of the UHRC in practice, it is important to first understand the meaning, rationale and importance of independence.

Just as judicial independence is important for the proper functioning of the courts, so too is the independence of national human rights institutions (NHRIs) for ensuring that they function effectively. In simple terms such independence means the absence of interference and influence by the state or other parties on the actions, operations, decisions and orders of the NHRI. Whereas independence is not the only yardstick against which the effectiveness of a national human rights institution is measured, it is generally seen as the most important factor that determines the credibility and legitimacy of the institution and its ability to discharge its functions effectively. Indeed, according to one commentator, *“the effectiveness of national human rights institutions primarily depends on their capacity to act independently of government. It also depends to a large extent on the institutions’ demonstrated ability to act independently of all other activities, governmental or not, that may impinge on their*

³⁷ Cl 83 provided that “Parliament may make laws to regulate the performance of the functions of the Uganda Human Rights Commission and shall in particular make laws necessary for ensuring that the functions of the Commission are effectively carried out without obstruction.”

³⁸ Uganda Human Rights Commission Act, Act 4 of 1997.

work.”³⁹

Although the genesis of NHRIs dates back to 1946 when the issue of national human rights institutions was first discussed by the Economic and Social Council (ECOSOC), it was the adoption of the Guiding Principles Relating to the Status of National Human Rights Institutions (Paris Principles) by the United Nations General Assembly in 1993 that provided “a set of criteria for evaluating both NHRIs’ independence from government interference and their effectiveness in promoting and protecting human rights.”⁴⁰ In particular, the Paris Principles provide as follows: “*the national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*”⁴¹

The Paris Principles further provide that: “*In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be affected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution’s membership is ensured.*”⁴²

Two years after the adoption of the Paris Principles, the United Nations – through its Centre for Human Rights – laid down four specific criteria that should be used to determine the independence of a national human rights institution. These were: 1) legal and operational autonomy, 2) financial autonomy, 3) appointment and dismissal procedures, and 4) composition of the institution’s membership.⁴³

It has to be pointed out that the state of absolute independence is perhaps near impossible. This is because independence is a relative concept. In the specific context of national human rights institutions, this relativity is impacted by the fact that such institutions are established by legislation from which they derive their powers and mandate, and they are required to report to the legislature by whom they are also generally funded. It is in this context and against this background that the independence of the Uganda Human Rights Commission in the light of the drafting history of the Constitution is discussed. Accordingly, the discussion focuses on legal and operational independence, financial independence, appointment and dismissal procedures and composition of UHRC membership and tenure of office.

³⁹ J Matshekga “Toothless bulldogs? The human Rights Commissions of Uganda and South Africa: A comparative study of their independence” (2002) 2(1) *African Human Rights Law Journal* 71.

⁴⁰ International Justice Resource Centre “Paris Principles” at <https://ijrcenter.org/national-human-rights-institutions/parisprinciples/#~:text=The%20United%20Nations%20General%20Assembly,promoting%20and%20protecting%20human%20rights> (accessed 25 November 2024).

⁴¹ United Nations “Principles relating to the Status of National Institutions (The Paris Principles)” Adopted by General Assembly resolution 48/134 on 1993-12-20, at <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris> (accessed 25 November 2024).

⁴² As above.

⁴³ United Nations “*National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights*” New York & Geneva (1995).

4.2. Legal and operational independence

As mentioned earlier, the Uganda Human Rights Commission is established by Article 51(1) of the Constitution. Articles 52 and 53 lay down the powers and functions of the Commission. Under Article 52, the Commission is mandated to perform the following functions: *“(a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right; (b) to visit jails, prisons, and places of detention or related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations; (c) to establish a continuing programme of research, education and information to enhance respect of human rights; (d) to recommend to Parliament effective measures to promote human rights, including provision of compensation to victims of violations of human rights, or their families; (e) to create and sustain within society the awareness of the provisions of this Constitution as the fundamental law of the people of Uganda; (f) to educate and encourage the public to defend this Constitution at all times against all forms of abuse and violation; (g) to formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an appreciation of their rights and obligations as free people; (h) to monitor the Government’s compliance with international treaty and convention obligations on human rights; and (i) to perform such other functions as may be provided by law.”*

Article 53 provides for the powers of the Commission to include issuing summons or other orders requiring the attendance of any person before the Commission and the production of any documents; questioning any person in respect of any subject matter under investigation; requiring any person to disclose any information within his or her knowledge relevant to any investigation by the Commission; and committing persons for contempt of its orders

It is particularly important to note that in performing its functions, the Commission has the powers of a court. These far-reaching judicial powers are particularly significant in the specific context of legal and operational independence. Indeed Article 54 guarantees such independence by providing that “[s]ubject to this Constitution, the Commission shall be independent and shall not, in the performance of its duties, be subject to the direction or control of any person or control authority.” This legal and operational independence is reinforced by Article 52(3) which allows the Commission to establish its operational guidelines and rules of procedure when performing its functions.

In the specific context of operational independence, it ought to be mentioned that the UHRC is operationalised by statute.⁴⁴ As mentioned earlier, this statute was enacted in 1997 in keeping with Articles 52(1)(i) and 58 of the Constitution and the need to guarantee the Commission’s independence as expressed during the drafting history of the Constitution. The Uganda Human Rights Commission Act⁴⁵ provides for the appointment of the Chairperson and the other members of the Commission, and for

⁴⁴ Uganda Human Rights Commission Act, Act 4 of 1997.

⁴⁵ As above.

the procedures of settlement of the Commission, its functioning and its composition, including immunities of members and staff, among other things.

There seems to be general agreement that the Commission has enjoyed a fair measure of independence as envisaged during the drafting history of the Constitution. According to one commentator: “...an examination of the work of the UHRC since its establishment reveals that the institution has managed to perform its constitutional functions to a great extent. This it has done independently of government, thus enhancing its credibility. The Commission has achieved this by exposing to the public human rights violations resulting from government’s actions or inactions.”⁴⁶

Furthermore, according to Matshekgga, “the UHRC has also demonstrated its institutional independence by handing down crucial decisions against government officials guilty of human rights abuses [and] reports published by the Commission on the human rights situation in Uganda indicate a measure of independence from government.”⁴⁷ The UHRC has also been praised for being “one of the strongest and most effective official human rights bodies on the continent... the UHRC’s independence and statutory authority – and its willingness to challenge government actions – has been credited for significantly improving the country’s human rights record.”⁴⁸ It is also important to note that the latest accreditation of NHRIs by the Global Alliance of Human Rights Institutions (as of 29 November 2022) classifies the UHRC as an A category institution.⁴⁹ This classification certifies that the UHRC is “fully compliant with the Paris Principles” which, as mentioned earlier, provide the foundation upon which the independence of NHRIs is premised.⁵⁰

Despite the apparent legal and operational independence enjoyed by the UHRC, there is no doubt that such enjoyment does not meet the standard envisaged by the drafting history of the Constitution. For example, there are certain limitations to what the Commission can and cannot do. These are laid out in Article 53(4) of the Constitution which provides that: “*The Commission shall not investigate (a) any matter which is pending before a court or judicial tribunal; or (b) a matter involving the relations or dealings between the Government and the Government of any foreign State or international organisation; or (c) a matter relating to the exercise of the prerogative of mercy*”.

While there may be rational reasons for these limitations, it has been argued that some of them may well be “inconsistent with the Paris Principles, which require

⁴⁶ Matshekgga 73. Also see Busingye Kabumba, „Criminalizing Indigenous Belief: The Constitutional Deficits of Uganda’s Witchcraft Act”, *Oxford Journal of Law and Religion*, Volume 12, Issue 1, February 2023, pp. 139–156, <https://doi.org/10.1093/ojlr/rwad014>.

⁴⁷ Matshekgga 73.

⁴⁸ M Fleshman (2004) “Human rights move up on Africa’s agenda” *Africa Renewal* July 2004, at <https://www.un.org/africarenewal/magazine/july-2004/human-rights-move-africas-agenda> (accessed 28 November 2024).

⁴⁹ As above.

⁵⁰ GANHRI, “Chart of the Status of National Institutions Accredited by the Global Alliance of National Human Rights Institutions: Accreditation status as of 29 November 2022” at <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf> (accessed 28 November 2028).

that national human rights institutions be given as broad a mandate as possible to carry out the functions of protecting and promoting human rights.”⁵¹ There have also been criticisms of the UHRC’s focus on civil and political rights and little attention to socio-economic rights. Although this has more to do with the general approach of the Constitution to the protection of such rights than with the independence of the Commission, it is our view that paying more attention to socio-economic rights would be consistent with the broad mandate envisaged by the Paris Principles. It would also enhance the independence of the Commission that was envisioned during the drafting history of the Constitution.

5. Financial independence

As mentioned earlier, the UHRC has a wide mandate.⁵² The achievement of such a wide mandate requires considerable financial resources. Indeed, for any human rights institution to be able to achieve its mandate, it requires not only access to adequate funding, but also the ability to have full control over such funding. In the case of the UHRC, while some have argued that it “enjoys a measure of financial independence from the executive”⁵³, there are those who argue that this is not the case. According to Chris Maina Peter, for example: *“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.”*⁵⁴

The inadequacy of government funding for the UHRC is regularly captured in the Commission’s annual reports. According to the latest available Annual Report,⁵⁵ during the financial year 2020/2021, the Commission received a total of UGX 22,496,000,000 (equivalent of about US\$ 6.16 million) from both the Government of Uganda and development partners. Of this amount, the government contributed UGX 18,903,000,000 (about US\$ 5.18) which constituted 84.02% while development partners contributed UGX 3,593,000,000 (about US\$ 984 000) constituting 15.9%.⁵⁶ The other 0.08% was contributed by other minor donors. These funds are clearly insufficient and are much less than what the Commission requires to execute its mandate and perform its functions efficiently. According to the Commission’s 2021 Annual Report: *“The Commission is still one of the least funded Government Institutions in terms of human resource. The staff salaries were not revised to date despite various requests to the Ministry of Finance, Planning and Economic Development to increase*

⁵¹ JC Mubangizi (2015) “A comparative discussion of the South African and Ugandan Human Rights Commissions” 48(1) *The Comparative and International Law Journal of Southern Africa* 124-143.

⁵² As per Article 52 of the Constitution.

⁵³ Matsheka 83.

⁵⁴ Maina Peter C (2009) “Human Rights Commissions in Africa – Lessons and challenges” In A Bösl & J Diescho, (eds) *Human Rights in Africa: Legal Perspectives on their Protection and Promotion* (Windhoek).

⁵⁵ The 24th Annual Report of the Uganda Human Rights Commission (2021).

⁵⁶ Peter 232.

them. Consequently, there is a glaring disparity between the salaries of Commission staff and sister institutions. This has caused high staff turnover as they leave for places with competitive remuneration. The Paris principles on NHRIs require that state funding should be sufficient for the functioning of the National Human Rights Institutions for it to have financial autonomy.”⁵⁷

Although “financial autonomy does not mean financial adequacy,”⁵⁸ and therefore care should be taken to distinguish between the two, there is no doubt that the inadequate funding of the UHRC or any other NHRI impacts on the ability to perform its functions and therefore compromises its independence. This, clearly, is inconsistent with what was envisaged during the drafting history of the Constitution which, as was seen earlier, envisioned adequate funding for the Commission.⁵⁹

6. Appointment and dismissal procedures

As mentioned earlier, lack of independence can prevent NHRIs from performing their functions effectively and can damage public confidence in their work. In order to guarantee the independence and effectiveness of NHRIs, appointment and dismissal procedures must be open, fair, and based on merit. The independence of national human rights institutions (NHRIs) can be jeopardized if political or other external factors are allowed to affect such procedures. This may happen, for example, if appointments and/or dismissals of commissioners are made unprocedurally, arbitrarily or for political reasons.

According to Article 51(2) of the Ugandan Constitution, “the commission shall be composed of a chairperson and not less than three other persons appointed by the President with the approval of Parliament.” Other than the requirement that the chairperson of the commission shall be a judge of the High Court, or a person qualified to hold that office⁶⁰ and that members of the commission shall be persons of high moral character and proven integrity⁶¹, it is not quite clear how the selection and appointments are made. What is very clear though, is that the appointments are done by the President with the approval of Parliament. This raises a number of concerns. Firstly, this gives the President (and hence the executive) too much influence in the appointment process. Secondly, there is no provision in the appointment process for any consultation or involvement of relevant stakeholders such members of civil society or human rights organisations. Thirdly, due the lack of clarity in the appointment process, it tends to be shrouded in secrecy and lacks transparency. All these do not inspire the confidence and

⁵⁷ Peter 238.

⁵⁸ J Hatchard (1995) ‘A New Breed of Institution: The Development of Human Rights Commissions in Commonwealth Africa with Particular Reference to the Uganda Human Rights Commission’, 32 (1) *Comparative and International Law Journal of Southern Africa* 35.

⁵⁹ See, for example, the recommendations of the Odoki Commission which emphasised that the envisaged Commission needed “to be assured of funding and staff sufficient to carry out its onerous tasks effectively” (note 10 above).

⁶⁰ Art 51(3).

⁶¹ Art 51(4).

integrity that the Commission deserves. They also do not auger well for the independence of the Commission. This is not what was envisaged during the drafting history of the Constitution. As mentioned earlier, the drafting history shows that there were concerns that the executive was likely to be the major threat to the independence of the Commission. As a result, the delegates were keen on guaranteeing its independence on issues such as the appointment of the commissioners. The delegates' wishes were clearly not fulfilled.

The same may be said about the removal of commissioners from office. The drafting history of the Ugandan Constitution emphasizes the importance of an independent human rights institutions, making it crucial to ensure that the removal process of Commissioners is carried out in a manner that upholds the independence of the Commission. As mentioned earlier, clause 81 of the Draft Constitution provided that "[a] member of the Commission may, with the approval of the National Council of State, be removed from office by the President only for inability to perform the functions of his office arising out of physical or mental incapacity or any other cause or, for misbehaviour or misconduct." During the article-by-article debate, delegates substituted "the National Council of State" with Parliament and the provision which was passed by the Constituent Assembly provided that "[a] member of the Commission may, with the approval of Parliament, be removed from office by the President only for inability to perform the functions of his office arising out of physical or mental incapacity or any other cause or, for misbehaviour or misconduct."⁶² However, when the Constitution was adopted, Article 56 provided that "[t]he provisions of this Constitution relating to the removal of a Judge of the High Court from office shall, with the necessary modifications, apply to the removal from office of a member of the Commission." The Hansard of the Constituent Assembly are silent on who made those changes, why and when. This means that the provision which was passed by the delegates of the Constituent Assembly is materially different from that which appears in the Constitution. That notwithstanding, Article 56 has to be read with Articles 144(2) and 144(3) which deal with the removal of judicial officers. They state as follows: "(2) *A judicial officer may be removed from office only for: (a) inability to perform the functions of his or her office arising from infirmity of body or mind; (b) misbehaviour or misconduct; or (c) incompetence, but only in accordance with the provisions of this article. (3) The President shall remove a judicial officer if the question of his or her removal has been referred to a tribunal appointed under clause (4) of this article and the tribunal has recommended to the President that he or she ought to be removed from office on any ground described in clause (2) of this article.*"

It would appear that despite the differences between these provisions and those agreed upon by the Constituent Assembly, the current constitutional safeguards seem to strengthen the removal process rather than weaken it. They are also consistent with the Paris Principles and therefore have no negative impact on the independence of the UHRC. There are no known cases of arbitrary removal of commissioners where these provisions have been violated.

⁶² Proceedings of the Constituent Assembly (1994-1995) 2213.

7. Composition and tenure

Related to the appointment and removal of commissioners are the issues of composition of membership of the Commission and the tenure of office. According to Article 51(2) of the Constitution, “the commission shall be composed of a chairperson and not less than three other persons.” In other words, the minimum number of members is four. Although this number has usually been exceeded in practice – currently there are seven members including the chairperson – the constitutional minimum number of four not ideal. It is our view that this composition grossly under-estimates the scale and complexity of work of the commission. It also leaves little room for diversity of experience, gender representation and depth of technical knowledge and professional skills. That would not have been the intention of the role-players in the drafting history of the Constitution. It also does not comply with the guidelines contained in the Paris Principles.

There have also been complaints about the commission being composed of political allies and acquaintances.⁶³ At one stage, four of the seven commissioners were appointed just after serving their terms in parliament.⁶⁴ According to some commentators, some commissioners have been appointed primarily “on the basis of their loyalty to the president and the political system in the country.”⁶⁵ This automatically compromises the independence of the commission and is far from what was envisaged during the drafting history of the Constitution.

According to Article 51(4), “...members of the commission...shall serve for a period of six years and be eligible for reappointment.” It is also interesting to note that their terms and conditions of service are generally based on the same terms and conditions of service of High Court judges. In so far as tenure of office is concerned therefore, it could be argued that members of the UHRC have sufficient security of tenure. It could also be argued that the constitutional guarantees regarding the tenure and conditions of service of the commissioners have no negative impact on the independence of the UHRC. This is what would have been expected during the drafting history of the Constitution.⁶⁶

8. Conclusion

The 1995 Constitution, which established the Uganda Human Rights

⁶³ See Diedericks, Meeschka, Felix Dube and Anél du Plessis. 2023. “Involving South Africa’s Human Rights Commission in Environmental Protection: *South African Human Rights Commission v Msunduzi Local Municipality*.” *South African Journal on Human Rights* 39 (2–3): 236–50. doi:10.1080/02587203.2023.2277288.

⁶⁴ Matshekgga 89.

⁶⁵ As above. See for specific details Robert Ojambo, 2022. “The 1995 Constitution as a Tool for Dictatorship in Uganda: An African Dilemma of Constitutionalism,” *Advances in African Economic, Social and Political Development*, in: Hannah Muzee & Tata Emmanuel Sunjo & Andrew Osehi Enaifoghe (ed.), *Democracy and Africanness*, pp. 3-19, Springer. DOI: 10.1007/978-3-031-11248-5_1.

⁶⁶ See note 7 above.

Commission as an independent institution, was adopted after years of political turmoil and human rights violations in the country. The framers of the Constitution intended to create a strong and independent Commission to serve as a watchdog for human rights abuses and to promote respect for human rights. However, the independence of the Commission has been challenged by various factors, including political influence, limited resources, and weak enforcement mechanisms. The purpose of this article was to illustrate and assess the extent to which the drafting history of the constitutional provisions relevant to the independence of the Human Rights Commission has had some impact on the independence of the Commission.

It has been established that while the Constitution provides a framework for the independence of the Uganda Human Rights Commission, the implementation of this independence has been hindered by various political and practical challenges. These have been discussed focusing on legal and operational independence, financial independence, appointment and dismissal procedures and composition and tenure of office of UHRC membership. Despite the challenges and the threats to the Commission's independence, however, it still remains an important institution in promoting and protecting human rights in Uganda.

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