

The Role of Commissions of Inquiry in Advancing Socio-economic Transformation: Traversing through the Limitations



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ABSTRACT

The Constitution, a cornerstone of South Africa's legal framework, provides for socio-economic rights in an inclusive society. The Bill of Rights, a vital component of the Constitution, further advances these rights. It establishes a variety of independent entities, such as the South African Human Rights Commission, bolstering socio-economic rights. The paper explores the critical role commissions of inquiry play in fostering socio-economic transformation in South Africa. Furthermore, the paper addresses the aspects influencing commissions' efficacy, such as mandate clarity, independence, public trust, and government backing. Commissions of inquiry ought to be strategic vehicles for achieving transparency, removing the veil to achieve accountability, and fair socio-economic advancement in modern government structures. The paper examines how commissions of inquiry have handled systemic issues, including corruption, economic inequality, and human rights violations. This paper will explore the potential for future policy formation and execution based on the impact of their recommendations. Despite their shortcomings, commissions of inquiry remain effective vehicles for furthering socio-economic development. The continuous improvement of their methodology and practices is not just a suggestion but a necessity for enhancing their influence in solving complex socio-economic concerns. These inquiries should ensure the government's accountability in upholding the socio-economic rights in the Bill of Rights as we mark 30 years of democracy. The author hopes the arguments in this paper will enhance the debate on advancing socio-economic transformation and improving inquiry commissions' methodologies to resist external influences like politics.

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INTRODUCTION

Socio-economic rights provide individuals in greater society access to fundamental necessities, resources, opportunities, and services for a decent living, such as food, shelter, health care, and social welfare and education.¹ The state must respect, protect, promote, and fulfill every socioeconomic right. Every person deserves a fair and just opportunity, and the state should embrace the Constitution and the Bill of Rights.²

¹ Sections 24-29 of the Constitution.

² Section 7(2) of the Constitution.

Liebenberg asserts that the constitutional concern to transform society in the post-apartheid dispensation is evident in a range of justiciable socio-economic rights entrenched in the Bill of Rights.³ Before 1994, South Africa was an apartheid state with no rights enshrined for all the people in the society. Human rights violations were the order of the day. To reverse the past disparities, after 1994, the state established institutions to strengthen South Africa's constitutional democracy and protect human rights.⁴ These institutions must remain impartial and independent and act for the dignity and effectiveness of the state in the stride to provide and protect socio-economic rights. South African Commissions of Inquiry, being one of these institutions established to bolster constitutional democracy, ought to address a plethora of issues inflicted to peoples Inquiry, one of an institution established to bolster constitutional democracy, ought to address a plethora of topics inflicted on people within the Republic. In the SARFU⁵ case, the Constitutional Court handled critical constitutional questions about the basis for a court to review the presidential power to establish a commission of inquiry. It was distinguished that "it is well-established that the function of the commission of inquiry is to determine facts and advise the President and also recommend" an action.⁶ In *Magidiwana*,⁷ the issue of families concerning victims of the Marikana Massacre, the *Farlam* Commission⁸ argued whether they were entitled to state funding for continued participation in the commission. Constitutional Court declared and reiterated that there is a dual role in the rudimentary purpose of commissions of inquiry and the advancement of accountability. The Court stated:

The President's decision to initiate a commission of inquiry is a means to uncover the truth about past events. This established truth can inform corrective measures, influence future policy and executive action, or even lead to the initiation of legislation. However, the search for truth also serves a broader societal purpose. It ensures transparency and accountability for the victims of the events investigated and the entire country.⁹

It is common cause that the formation of commissions of inquiry results from gross misgivings and violations of rights and trust in the public service and its activities. Human rights violations impede the ethos of a democratic formation and transformation of people's lives, preventing or limiting the ethos philosophy of a democratic formation and transformation of people's lives ethos of a democratic formation and transformation of people's lives, preventing, or limiting. The Constitution and its founding values of the new society advocate for socioeconomic rights and human dignity. For the state to address atrocities, such as corruption, restore public confidence, and address various issues affecting the government and society, it must appoint a commission of inquiry. Commissions are established through the Commissions Act.¹⁰ However, their effectiveness has been questioned due to their lackluster outcomes.

Commissions of inquiry ought to serve as strategic vehicles for attaining openness, accountability, and equitable socioeconomic progress in modern government institutions. The South African democracy is founded on the values that seek to bolster people's socio-economic life aimed at diminishing all patterns of the brutal apartheid. Three decades into democratic South Africa, the state struggles to fully adhere to the supremacy of the Constitution and the rule of law. The inclusion of social rights in the Constitution and Bill of Rights confirms the legitimacy of claims for fair and equal rights for all humans

³ Sandara Liebenberg, "South Africa's Evolving Jurisprudence on Socio-Economic Rights: An Effective Tool in Challenging Poverty?," *Law, Democracy & Development* 6, no. 2 (2002): 159–91. Sandara is an Associate Professor, Project Coordinator, Socio-Economic Rights Project. Community Law Centre, University of the Western Cape.

⁴ Section 181 of the Constitution.

⁵ *President of the Republic of South African Rugby Football Union 2000 1 SA 1 (CC)* ("SARFU").

⁶ SARFU paras 146-147.

⁷ *Magidiwana v President of the Republic of South Africa 2015 6 SA 494 CC* ("Magidiwana").

⁸ *Farlam* presided over the Marikana Commission of Inquiry. The Marikana Commission of Inquiry (Commission) was appointed by the President of the Republic of South Africa, Mr. Jacob Zuma, in terms of Section 84(2)(f) of the Constitution of the Republic of South Africa of 1996, on 23 August 2012. Its mandate arising from the Terms of Reference promulgated on 12 September 2012 is to investigate matters of public, national, and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the Northwest Province, which took place on about Saturday 11 August to Thursday 16 August 2012, which led to the deaths of approximately 44 people, more than 70 persons being injured, and approximately 250 people being arrested.

⁹ *Magidiwana* para 15.

¹⁰ Commissions Act, no 8 of 1947.

in democratic South Africa. It endorses the critical role of the Constitution in human life.¹¹ Some of the case ground-breaking cases that unearthed the state's attitude towards this have been confirmed in the evolving jurisprudence on issues of socio-economic rights through the ground-breaking cases such as the Soobramoney case, Grootboom case and Minister of Health vs. TAC case post-1994 post-1994.

This paper aims to evaluate the efficacy of these commissions 30 years into the post-constitutional era. The paper aims to assess the commission's effectiveness and potential reforms. The terms of reference (ToRs) serve as a critical framework for investigating issues of concern. The president is authorized by law to appoint such authorized by law to appoint such commissions of inquiry.¹² The Zondo Commission has the most expensive commission.¹³ The Zondo Commission was appointed to investigate state capture, corruption, and fraud allegations. Significant corruption was found in large state-owned enterprises (SOEs) like Eskom and SAA. Despite the commission's recommendations, the state is resilient enough to cooperate fully and hesitates to implement them. They are carefully underscoring the state's resistance and a nuanced evaluation of its effectiveness in addressing issues. It must be emphasized that this study does not intend to address any of these concerns length in detail; instead, this discussion will be limited to opening remarks. The research delves into the factors determining commission efficacy, including mandate clarity, independence, public trust, and government backing.

METHODOLOGY

The study's methodology is based on a qualitative approach. An explanatory literature review encompassed scholarly papers, points of view, principles, Judicial Precedents, Farlam, and Zondo Commission findings. The critical sources used were commission conclusions, study findings, and newspaper stories from prominent publications documenting eyewitness descriptions of the massacres and protests. Furthermore, secondary research was carried out using both primary and secondary sources. Secondary sources in this study contained books, internet sites, and documents containing descriptive articles and commentaries.

Critical role commissions of inquiry play in fostering socio-economic transformation in South Africa

The Preamble of the Constitution asserts that it aims to heal the divisions of the past and establish a society based on democratic values, social justice, and fundamental human rights, improve the quality of life of all citizens, and free the potential of every person. Fundamentally, the state runs its affairs for the people of the Republic and, therefore, should protect their interests.¹⁴ The role of the Commission of Inquiry, while helping to guide the state, remains an important tool to guide the government in improving people's rights in the Constitution. When the state does not adequately follow the guidelines on its constitutional obligations, it tramples on the citizens' rights that the law protects. Commissions of inquiry and recommendations realign to transform the fundamental human rights of intentionally. Taylor maintains that:

“When we look at the issue of core obligations concerning socio-economic rights, we need to push to the center of the debate the concern that certain fundamental human needs should be non-negotiable.”¹⁵

The Zondo Commission of Inquiry has been celebrated that it revealed the state's sins especially corruption inquiry has been celebrated because it revealed the state's sins, especially corruption, which continues to undermine Human Rights.¹⁶ However, the role of the Commissions is incomplete if status

¹¹ Sections 7(1) of the Constitution.

¹² Section 84(2) (f) of the Constitution.

¹³ E. James, “An Introduction to the Zondo Commission in South Africa,” Out-Law Guide, Pinsent Masons, 2022, <https://www.pinsentmasons.com/out-law/guides/introduction-the-zondo-commission-south-africa>.

¹⁴ Preamble to the Constitution of the Republic of South Africa, 1996.

¹⁵ Prof. Vivian Taylor, Programme Coordinator (Development), UN Commission on Human Security, New York in her closing address to the colloquium organised by the Community Law Centre. Realising socio-economic rights in SA: Progress and challenges, Cape Town, 17-19 March 2002.

¹⁶ Khanyisile Ngcobo, “Zondo's ‘Courage’ at Helm of State Capture Inquiry Lauded at ConCourt Special Sitting,” Timeslive, August 24, 2024, <https://www.timeslive.co.za/news/south-africa/2024-08-21-zondos-courage-at-helm-of-state-capture-inquiry-lauded-at-concourt-special-sitting/>.

incomplete if the status on the ground remains the same. Realizing socio-economic rights is indispensable to the success of South Africa's constitutional democracy and ensuring the whole's meaning. Realizing socio-economic rights is essential to the success of South Africa's constitutional democracy and ensuring the meaning to the country's whole population.¹⁷ While South Africa ranks at no.83 in the CPI, it seems that the challenges of facilitating ranking at no.83 in the CPI that the difficulties to facilitate ease people's socio-economic challenges continue to live on. Social disparities, though they were a way of life in the apartheid dispensation, 30 years into the constitutional democracy, corruption, and many other anomalies, are still lived experiences in the Republic of South Africa. Celebrations of the narrative that our Constitution is one of the best in the whole world are arguable as the situation on the ground contradicts the claim.¹⁸ Human rights cannot be replaced by narratives but by works to validate that narrative. Those who suffered because of the apartheid system must experience the goodness of the Constitution through the implementation of alleviation of their past sufferings. However, the socio-economic corruption effects revealed by the state capture undermine people's socioeconomic rights.

Rubio affirms:

“Human rights are not simply a nice-to-have in the fight against corruption. Authoritarianism makes anti-corruption efforts dependent on the whims of an elite. Ensuring that civil society and the media can speak freely and hold power to account is the only sustainable route to a corruption-free society.”¹⁹

Despite public anticipation of the socio-economics' better governance after the resignation of former President Jacob Zuma, it is regretted that Ramaphosa's administration continues to show no difference in human and socio-economic rights violations. Burke J wrote about Ramaphosa's disappointing administration and called it “Ramaphoria that turned into Armageddon,” which refutes any strides made by Ramaphosa. Gumede.²⁰ He is disappointed and condemns the status quo, which the state has successfully fallen short of addressing constitutional imperatives, especially social justice. Gumede explains:

“The dream of Nelson Mandela that South Africans would grow into a nation reconciled with its past, free of racial tension and will grow wealth equitable shared is “absolutely in crisis.”

Until the work of the Commissions of Inquiry is fully implemented, it will remain seen as a wasteful expenditure and abuse of state funds.

Aspects that influence commissions' efficacy.

While the commission of inquiry conducts its work, the Constitution empowers state organs to exercise their powers and mechanisms to enforce the hand of the law against the perpetrators.²¹ The functioning of these institutions is guided by the Constitution and the rule of law, and in promoting the work of the commissions of inquiry, they must encourage, respect human rights and promote and advocate for the attainment of human rights.²² When these institutions are activated to implement what the commissions would have unearthed as socio-economic disparities, the commission's work ultimately impacts the lives of the ordinary people of South Africa. Similarly, the Commission of Inquiry may explicitly recommend state policy changes to correct the wrongs.²³

Essentially, such policy changes interpret the realization of socio-economic rights. However, when there are no policy changes, the commission's work will not yield the expected results. Again, this exposes the will of the SAHRC and PP to adhere to the constitutional obligation to ensure that steps are

¹⁷ Liebenberg, “South Africa's Evolving Jurisprudence on Socio-Economic Rights: An Effective Tool in Challenging Poverty?”

¹⁸ P du toit, “State Capture: What Cyril Ramaphosa Said and When He Knew It,” Huff Post, May 2018, https://www.huffingtonpost.co.za/2018/05/28/state-capture-what-cyril-ramaphosa-knew-and-when-he-knew-it_a_23445148/.

¹⁹ du toit, “State Capture: What Cyril Ramaphosa Said and When He Knew It.”

²⁰ J. Burke, “How South Africa's Ramaphoria Turned into Armageddon,” accessed October 10, 2024, <https://www.theguardian.com/world/2018/sep/09/cyril-ramaphosa-allies-long-walk-mandela-south-african-dream>.

²¹ Section 182(2) of the Constitution.

²² Section 184(1)(a)(b) read with section 7(2) of the Constitution.

²³ After considering factors around the state capture and human violations, the Zondo Commission concluded its work with a comprehensive analysis, findings, and recommendations. Zondo Commission of Inquiry, “State Capture, Corruption and Fraud in the Public Sector Including Organs of State,” 2018, https://www.statecapture.org.za/site/files/announcements/672/OCR_version_-_State_Capture_Commission_Report_Part_VI_Vol_IV_-_Recommendations.pdf.

taken to secure appropriate redress where human rights have been violated.²⁴ Equally, the Constitution states that these encapsulated rights are enshrined in all people of South Africa, and the state must respect, protect, and promote their fulfilments. The state must respect, protect, and promote the fulfillment of the Bill of Rights.²⁵ All these factors empower the state organs, especially SAHRC and PP, to hold the perpetrators of human rights violations accountable. What remains amiss is the silence and resilience to act on the human rights violations by the powers. The words of Martin Luther King Junior become evident in this case:

“In the end, we will remember not our enemies' words, but our friends' silence.”

The efficacy of these commissions of inquiry to impact the directly should not only be to tick the boxes after their completion but to directly affect ordinary citizens socially and economically and restore the dignity of persons that would have been violated. Although it is known that systemic disparities translate to the fact that essentially human rights violations occur to the most vulnerable groups and, by implication, have lesser or no voice hence, the commissions ought to restore their dignity to that of a human. This view is alluded to by one commentator on what transpired in the Marikana massacre as follows:

“The leadership of the police, on the highest level, appears to have taken the decision not to give the true version of how it came about that the ‘tactical option’ was implemented on the afternoon of August 16 and to conceal the fact that the plan to be implemented was hastily put together without public order policing inputs or evaluation.”²⁶

In *S v Makwanyane*²⁷, O’Regan J held that dignity is “an acknowledgment of the inborn worth of human beings” and, therefore, all “human beings are entitled to be treated as worthy of respect and concern.” Essentially, the commissions of inquiry take us back to the concept of Ubuntu.²⁸ People should survive in unity and harmony while respecting the Constitution and the rule of law.

How Commissions of Inquiry have handled Systemic Issues

Commissions of inquiry are fact-finding missions inquisitorial and ought to investigate and recommend to the President based on their findings. The anticipation is that implementation and execution of the recommendations must bolster socio-economic rights enshrined in the Constitution. The Marikana Commission was constituted in response to the sad events of August 2012, when police shot and murdered 34 miners during a strike at Lonmin's Marikana mine. The panel aimed to study the events leading up to the disaster, focusing on the labor of various concerns, such as labor relations, where it should investigate the difficulties between mining firms, unions, and workers, emphasizing the failures to address labor rights and the dire situations that workers confronted. The Commission was also charged with scrutinizing police behavior, expressing concerns about the use of fatal force and the techniques used to handle the strike. Finally, the panel was entrusted with researching the subject of accountability and governance, aiming to hold responsible parties accountable and strengthen governance in both the mining sector and law enforcement.

Though the Marikana Commission concluded its assigned duties accordingly, the state had fallen short of investigating the fundamentals of human existence, the right to live, and dignity. The crafters of the commission’s terms of reference (TORs) omitted including the rights in sections 10 and 11 of the Constitution, and the concept of Ubuntu was disregarded.²⁹

²⁴ Section 184(2)(b) of the Constitution.

²⁵ Section 7(2) of the Constitution.

²⁶ Tolsie N., “SAPS Rot Runs Deep in Marikana Cover-Up,” 2015, <https://mg.co.za/article/2015-07-02-saps-rot-runs-deep-in-marikana-cover-up>.

²⁷ *S v Makwanyane* (“*Makwanyane case*” 1995 2 SACR 1 (CC) para 328.

²⁸ Lovemore Mbigi and Jenny Maree, *Ubuntu, the Spirit of African Transformation Management* (Knowledge Resources, 1995), 1-7; *Makwanyane case* para 308. This is a metaphor that describes group solidarity, which is central to the survival of communities with a scarcity of resources, where the fundamental belief is that *motho ke motho ba bath bangle/ umuntu ngumuntu ngabantu* which, literally translated, a person is a person through others.

²⁹ Section 1(a), 7(1-2) of the Constitution.

In the third Bram Fischer memorial lecture, Justice Chaskalson³⁰ aptly summarised the essence of human dignity in the interpretation of social security rights:

“... these rights are rooted in respect for human dignity, for how can there be dignity in a life lived without access to housing, health care, food, water or, in the case of persons unable to support themselves, without appropriate assistance? In the light of our recognition and realization of the evolving demands of human dignity in our society, a society under transformation is particularly important for the type of society we have in the future.”³¹

While the commission may have tried to expose these systemic issues, it fell short in reaffirming the constitutional obligations of a right to life and dignity to those who lost lives during the killings, embracing *Ubuntu* as the pillar of our democracy.³² On the other hand, the Zondo Commission was created to examine claims of state capture, corruption, and fraud in South African governmental institutions, notably during Jacob Zuma's presidency. It focused on exposing the systemic corruption that pervaded numerous governmental bodies and the influence of private interests over public institutions. The commission investigated how numerous governmental institutions failed to carry out their duties, frequently owing to corrupt leadership and insufficient monitoring. It was also tasked to make proposals for rebuilding public trust in government and strengthening accountability procedures.

Consequently, both commissions of inquiry attempted to address systematic concerns. The Marikana Commission addressed the injustices suffered by underprivileged groups, such as mine workers and residents victimized by corruption. In its findings and suggestions, it provided procedures preventing similar occurrences. Equally, in promoting accountability, the Zondo Commission of Inquiry underlined the importance of responsibility from public and commercial enterprises, calling for legislative and institutional reforms. However, though the commissions attempted to investigate the violated rights and ultimately issued their recommendations based on their findings, the resilience to execute these recommendations equally perpetuates wrongdoing, impeding socio-economic rights from realization. Identifying the common limitations to the commissions of inquiry varies from one commission to the other. It differs from ToR's Commissions of Inquiry, which are critical for investigating systemic issues. Still, they frequently face constraints such as limited power, scope, and mandate, resource constraints, political interference, public trust, time constraints, evidence collection challenges, and a lack of political will or public support. These constraints underscore the difficulties of conducting successful investigations into systemic concerns, which need the cooperation of organizations and individuals to ensure the validity of their conclusions and recommendations.

Discussion Summary

While commissions make strides in their investigations, there are commissions with many shortcomings. These limitations pose an essential expenditure and terrible picture of the state and equally dissuade the public from getting involved; they essentially think the commissions are wasteful expenditures, a horrific and terrible picture of the state, and equally dissuade the public from getting involved. They essentially think the commissions are wasteful expenditures, a terrible, horrible picture of the state, and equally dissuade the public from getting involved, but the commissions are wasteful. The commission's limitations include uncertain aims and outcomes, a lack of enforcement measures, political and institutional meddling, selection procedures, and targeted probes. The long durations and financial cost of commissions can also lead to cynicism and a disconnect between the proposals made and their actual influence and recommendations on accountability for criminal conduct and reform. Legal and ethical limits can limit commissions' ability behavior issues to address criminal behavior issues to address criminal behavior issues adequately. In contrast, ethical considerations can undermine the legitimacy and integrity of their conclusions. Systemic and structural factors, such as inefficient or corrupt underlying institutions, can impact the commission's efficacy.

³⁰ Arthur Chaskalson, “Human Dignity as a Foundational Value of Our Constitutional Order,” *South African Journal on Human Rights* 16, no. 2 (January 2, 2000): 193–205, <https://doi.org/10.1080/02587203.2000.11827594>.

³¹ Nazeem MI Goolam, “Human Dignity - Our Supreme Constitutional Value,” *Potchefstroom Electronic Law Journal* 4, no. 1 (July 10, 2017): 42–57, <https://doi.org/10.17159/1727-3781/2001/v4i1a2879>.

³² Section 2 of the Constitution.

RECOMMENDATIONS

Policymakers must take decisive action to prioritize developing and implementing comprehensive Constitutional rights and promote open dialogue among all stakeholders. To improve clarity, I affirm the importance of three key factors: clarity of mandate, independence, and public trust. Each of these elements is essential for the effective functioning of inquiry commissions. A well-defined mandate ensures that commissions focus on pertinent issues, while independence from political influence allows for unbiased investigations. Public trust is crucial, as it encourages community engagement and ensures that the commissions' findings are taken seriously. Moreover, the inclusion of specific case studies, such as the Zondo Commission's investigation into state capture, illustrates the tangible impacts of these inquiries. Success stories like this provide concrete evidence of how commissions can bring about accountability and inspire reforms in public policy, reinforcing their value as change agents.

Critics of commissions of inquiry often point out their limitations, such as lengthy processes and the risk of politicization. Acknowledging these challenges allows for a more nuanced discussion and suggests that while commissions hold significant potential, they must continuously evolve to meet societal needs effectively.

As we reflect on 30 years of democracy, it is crucial to celebrate the accomplishments of these inquiries and advocate for their ongoing development. This study contributes to the discourse on socio-economic transformation, emphasizing that enhancing the methodologies of inquiry commissions is vital for resisting external political influences and safeguarding the socio-economic rights enshrined in the Bill of Rights. My findings advocate a concerted effort to fortify these institutions, ensuring they remain essential in pursuing a more equitable society.

CONCLUSION

In closing, the paper's purpose was to reiterate the importance of illuminating the issues' complexities and identifying actionable pathways for effective resolution. By rigorously following the recommendations outlined above, the state can drive significant progress toward effective strategies that meet the needs of our society. The time for action is now; ongoing commitment from all parties is essential to ensure successful implementation and foster lasting change.

The study examined the role of commissions of inquiry in South Africa's socioeconomic plight, emphasizing their importance in encouraging openness and accountability. It stresses the relevance of these commissions in tackling systemic issues such as corruption and economic injustice while also recognizing their limitations, such as imprecise mandates, a lack of independence, insufficient government backing, and a lack of political will. Despite these limits, the article contends that commissions can promote institutional reform and equitable growth, provided their recommendations are correctly followed and executed. Clear mandates, independence, public trust, and government backing influence commission performance and efficacy. However, the paper also emphasizes commissions' limitations due to political influence and many other commission's impediments. The state must abide by the socio-economic rights encapsulated in the Constitution so that its supremacy becomes tangible and uplifts the lives of the most vulnerable.

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